Public Prosecutor v Ismil bin Kadar and Another
[2009] SGHC 84

Case Number : CC 9/2006

Decision Date : 07 April 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Anandan Bala, Mark Tay, Muhd Imaduddien and Mohd Faizal (Deputy Public Prosecutors) for the prosecution; R Thrumurgan (Thiru & Co) (assigned) assisted by Krishnan Nadarajan (Tan, Lim & Wong) (assigned) for the first accused; Ismail Bin Hamid (Ismail Hamid & Co) (assigned) assisted by Rajan Supramaniam (Hilborne & Co) (assigned) for the second accused

Parties : Public Prosecutor — Ismil bin Kadar; Muhammad bin Kadar

Criminal Law

Criminal Procedure and Sentencing

Evidence

7 April 2009 Judgment reserved

Woo Bih Li J:

Introduction

1 The first accused person Ismil Bin Kadar ("Ismil") and the second accused person Muhammad Bin Kadar ("Muhammad") are brothers who faced the following charge initially:

> That you, 1. ISMIL BIN KADAR
>
> 2. MUHAMMAD BIN KADAR
>
> on or about the 6th day of May 2005, between 8.00 a.m. and 2.00 p.m., at Block 185 Boon Lay Avenue #05-156, Singapore, in furtherance of the common intention of you both, did commit murder by causing the death of one Tham Weng Kuen, female aged 69 years, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

2 After the two trials-within-a-trial or *voir dire* which I shall elaborate on below, the charge was amended to specifically mention that the common intention was to commit robbery as was all along understood to be the prosecution's case. Accordingly the charge, as amended, was as follows:

> That you, 1. ISMIL BIN KADAR
>
> 2. MUHAMMAD BIN KADAR
>
> on or about the 6th day of May 2005, between 8.00 a.m. and 2.00 p.m., at Block 185 Boon Lay Avenue #05-156, Singapore, in furtherance of the common intention of you both to commit robbery, did commit murder by causing the death of one Tham Weng Kuen, female aged 69 years,

and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

3 For easy reference, I will refer to the victim as "Mdm Tham" or "the deceased" and to the relevant block of flats as "Block 185". I will also refer to the premises #05-156 at which Mdm Tham was killed, as "the deceased's flat" or "her flat". This was a two-bedroom Housing and Development Board flat. Ismil and Muhammad were residing one floor below at Block 185 Boon Lay Avenue #04-154 ("#04-154") on the date when Mdm Tham was killed. Their dates of birth are 27 April 1968 and 29 June 1975 respectively. On 6 May 2005, they were 37 and 29 years of age respectively. Their heights are 1.7 metres and 1.68 metres respectively.

4 The deceased stayed at her flat with her 69 year old husband Loh Siew Kow ("Mr Loh"), a bedridden stroke patient. In the morning of 6 May 2005, some time between 8am and 9am, Mdm Tan Bee Choo had called and spoken to the deceased to arrange to visit the deceased's flat to change a nasogastric tube attached to the nose of Mr Loh. Mdm Tan was attached to the Home Nursing Foundation located at Bukit Batok Polyclinic and her duty was to visit and provide medical treatment to bedridden patients at their homes. Mr Loh was one of her patients.

5 Pursuant to the arrangement made earlier that day, Mdm Tan arrived at the deceased's flat at about 4pm. The iron gate and wooden door were closed. She knocked on the door but no one responded. She called out for the deceased but there was no response. She then used her mobile phone to call the residential line of the deceased. She could hear the phone inside the deceased's flat ringing but no one answered her call. Mdm Tan decided to call Loh Yim Leng, whom she referred to as Catherine, a daughter of the deceased. She informed Catherine that the deceased was not responding to her knocks on the door or to her calls to the residential line. She would return to her office and would visit Mr Loh the following day. Catherine said she would visit the deceased's flat after work. Catherine's evidence was that she also called the residential line but without success. After work, she went to and arrived at the deceased's flat at about 7.30pm. The gate and door were closed. She knocked on the door but there was no response. She again called the residential line and heard the phone inside the deceased's flat ringing but no one answered the call. She sought the assistance of the police.

6 Two policemen arrived outside the deceased's flat at about 8.00pm. The front gate was open but not the door. They spoke to Catherine and eventually obtained her permission to break open the door. The policemen created a hole in the door and through that hole a hand was inserted to open the door from the inside. The deceased was found lying motionless on the living room floor in a pool of blood. Mr Loh was lying on a bed in a bedroom. A paramedic who arrived at the scene pronounced the deceased dead at about 8.40pm.

7 The material parts of the autopsy report by Dr Lai Siang Hui stated:

SUMMARY OF FINDINGS

This was a case of homicide. Autopsy revealed more than 110 incised wounds and stab wounds together with blunt trauma to the neck and, head and back. Most of the wounds were of slashes and chopping-type wounds (collectively being described as sharp-force injuries or incised wounds) to the head and neck. There were also numerous incised wounds to the upper limbs consistent with defence injuries. These injuries indicated that the victim had put up significant resistance and self-defence against the assault.

The mechanism of death was due to severe blood loss from exsanguination. The source of blood

loss was the numerous wounds in the head and neck regions. There was no single life-threatening wound or injury that accounted for death. Instead, the collective numbers of wounds had caused a relatively slow venous bleeding.

…

That a number of wounds to the head were associated with underlying bony injuries indicated moderate to severe force involved, bearing in mind relative movements between victim and assailant. The many overlapping and directions of the wounds indicated a prolonged yet somewhat frantic assault on the victim, who was all the while, making great effort to move away from her assailant. Hence, many of the wounds to the sides, top and back of the head and over the back of the neck.

…

On a different angle, the blood stain and spatter pattern in the flat showed that two assaults had taken place. The first occurred in the toilet at the far end of the kitchen. Then there were smears on the furniture and various kitchen work surfaces, as well as on the floors, which tracked the victim's passage towards a chair in just beyond the kitchen entranceway.

…

In summary, the injuries on the body and with correlation of scene evidence was consistent with the victim having suffered two attacks. The victim had finally succumbed at entranceway to the kitchen, where the second and final assault occurred. The overall pattern was consistent with two weapons being used in the assault. At this point, the findings were also consistent with the assault having being inflicted by one assailant.

CERTIFIED CAUSE OF DEATH

Ia ACUTE EXSANGUINATION

Ib MULTIPLE INCISED WOUNDS TO THE HEAD AND NECK

8 The prosecution relied heavily on various statements made by Ismil and by Muhammad to officers in the Special Investigation Section ("SIS") of the Criminal Investigation Department ("CID"). Each of the accused persons contested the admissibility of their respective statements for various reasons. I set out below various legal principles in respect of the admissibility of statements made by an accused person.

The Law on Admissibility of Statements

9 The admissibility of statements from an accused person is governed by s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which is similar to s 24 of the Evidence Act (Cap 97, 1997 Rev Ed). For present purposes, I need set out only s 122(5) which states:

Where any person is charged with an offence any statement, whether it amounts to a confession or not or is oral or in writing, made at any time, whether before or after that person is charged and whether in the course of a police investigation or not, by that person to or in the hearing of any police officer of or above the rank of sergeant shall be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-

examination and for the purpose of impeaching his credit:

Provided that the court shall refuse to admit such statement or allow it to be used as aforesaid if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient, in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

10 However, where an accused person simply denies that he made a statement attributed to him, the admissibility of the statement is not in issue and hence there is no need to conduct a *voir dire*. This is the fourth typical situation referred to by the Privy Council in *Seeraj Ajodha v The State* [1982] A C 204 ("*Ajodha*"). Lord Bridge of Harwich said at 221 and 222:

It may be helpful if their Lordships indicate their understanding of the principles applicable by considering how the question should be resolved in four typical situations most likely to be encountered in practice. (1) The accused admits making the statement (orally or in writing) but raises the issue that it was not voluntary. This is a simple case where the judge must rule on admissibility and, if he admits the evidence of the statement, leave to the jury all question as to its value and weight. (2) The accused, as in each of the instant appeals, denies authorship of the written statement but claims that he signed it involuntarily. Again, for the reasons explained, the judge must rule on admissibility, and, if he admits the statement, leave all issues of fact as to the circumstances of the making and signing of the statement for the jury to consider and evaluate. (3) The evidence tendered or proposed to be tendered by the prosecution itself indicates that the circumstances in which the statement was taken could arguably lead to the conclusion that the statement was obtained by fear of prejudice or hope of advantage excited or held out by a person in authority. In this case, irrespective of any challenge to the prosecution evidence by the defence, it will be for the judge to rule, assuming the prosecution evidence to be true, whether it proves the statement to have been made voluntarily. (4) On the face of the evidence tendered or proposed to be tendered by the prosecution, there is no material capable of suggesting that the statement was other than voluntary. The defence is an absolute denial of the prosecution evidence. For example, if the prosecution rely upon oral statements, the defence case is simply that the interview never took place or that the incriminating answers were never given; in the case of a written statement, the defence case is that it is a forgery. In this situation no issue as to voluntariness can arise and hence no question of admissibility falls for the judge's decision.

11 The principle from the fourth typical situation stated in *Ajodha* was implicitly accepted by the Court of Appeal in *PP v Oh Laye Koh* [1994] 2 SLR 385 at 395.

12 However, where a statement is challenged on the ground that it was not made and the circumstances are such as to raise the question that if it was made, it was not made voluntarily, then a *voir dire* should be held. It seemed to me that this proposition was envisaged in the third typical situation in *Ajodha*. Subsequent cases have applied this proposition, see *Seow Choon Meng v PP* [1994] 2 SLR 853 ("*Seow Choon Meng*"), *Thongjai v R* [1998] AC 54 and *Timothy v The State* [2001] 1 WLR 485.

13 As regards the question of a threat, inducement or promise, the Court of Appeal in *Gulam Bin Notan Mohd Shariff Jamalddin v PP* [1999] 2 SLR 181 ("*Gulam*") said at 203:

Whether a statement is voluntary is a question of fact: *Tan Boon Tat v PP* [1992] 2 SLR 1,

following *DPP v Ping Lin* [1975] 3 All ER 175. It is also well established that the common law concept of involuntariness by oppression in *R v Prager* (1972) 56 Cr App R 51 has been subsumed under s 24 of the Evidence Act. The test for determining admissibility under s 24 is first, whether the confession was made as a consequence of any inducement, threat or promise, and second, whether in making that confession, the accused did so in circumstances which, in the opinion of the court, would have led him reasonably to suppose that he would gain some advantage for himself or would avoid some evil of a temporal nature to himself. Both are questions of fact and are matters of judicial evaluation: see *Seow Choon Meng v PP* [1994] 2 SLR 853 and *Tan Boon Tat v PP* [1992] 2 SLR 1, following *DPP v Ping Lin* [1975] 3 All ER 175. The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge: *Dato Mokhtar bin Hashim v PP* [1983] 2 MLJ 232 and *Mohd Desa bin Hashim v PP* [1995] 3 MLJ 350.

14 In *Lim Thian Lai v PP* [2006] 1 SLR 319, Chao Hick Tin JA reiterated the objective and subjective components at [14].

15 It is a question of fact to be determined in the circumstances of each case whether a statement or conduct by someone else, usually a police officer, constitutes an inducement, threat or promise which operated on the mind of an accused person and caused him to give his statement.

16 I now come to oppressive circumstances. Such circumstances such as prolonged interrogation have been sometimes described as a form of inducement or threat. Again, it would be a question of fact whether a given set of circumstances is oppressive.

17 In *Seow Choon Meng* ([12] *supra*), Karthigesu JA said at 864 and 865:

> We now turn to consider the question of oppression in relation to the admissibility of statements made by an accused person during police investigation. Oppression in this context relates to the methods and manner of interrogation preparatory to and during the making of statements. It has been said that oppressive questioning may be described as questioning which by its nature, duration or other attendant circumstances, including the fact of custody, excites hopes, such as the hope of release, or fears, or so affects the mind of the person being interrogated that his will crumbles and he speaks when otherwise he would have remained silent – questioning in circumstances which tended to sap and did sap, the free will of the person interrogated: per Edmund Davis LJ in *R v Prager*. At the same time, it has been said that the court's approach should not be such so as to form 'a clog on the proper exercise by the police of their investigating function, and, indeed, on the administration of justice itself: per Lord Hailsham in *DPP v Ping Lin* at p 183. Robust interrogation is, in our opinion, an essential and integral aspect of police investigation. However, as was observed by LP Thean J in *Sim Ah Cheoh* at p 361, if the questioning is too vigorous or prolonged, it becomes oppressive, with the result that a doubt arises as to whether the statement or the answers have been caused by any fear or threat so as to render the statements or answers to the question inadmissible.

18 In *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25, Yong Pung How CJ ("CJ Yong"), delivering the judgment of the Court of Appeal said at [48] to [50]:

> Oppression
>
> 48 Oppression is a circumstance which may render a confession involuntary and thus

inadmissible, and whether the accused has been subjected to oppression is a question of fact: *Seow Choon Meng v PP*. In *R v Priestley* (1967) 51 Cr App R 1, Sachs LJ, as he then was, said:

> [T]his word [oppression] … imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary. … Whether or not there is oppression in an individual case depends upon many elements. … They include such things as the length of time of any individual period of questioning, the length of time intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world.

In other words, a statement would not be extracted by oppression unless the accused was in such a state that his will was 'sapped' and he could not resist making a statement which he would otherwise not have made: *PP v Tan Boon Tat* [1990] SLR 375, [1990] 2 MLJ 466. In that case, the accused sought to show that the circumstances in which he had made the statement were so oppressive that his will was sapped or broken with the result that the statement was not one made with his own free will. On the facts, the accused was not given any food or drink at all from the time of his arrest at about 3.30pm to about 1am the following morning. He was therefore very tired and hungry and was in a daze and a state of confusion when the statement was given. It was accepted that the accused was tired, hungry and thirsty, and that he was under great stress. But the court was not convinced that the accused was in such a state of shock, exhaustion or fatigue that he had no will to resist making any statement which he did not wish to make, and found that the statement had been made voluntarily. In this regard, it is not realistic to take the sweeping stand that every failure to offer an accused sustenance constitutes a threat or an inducement of such gravity as to render any statement made involuntary: *Fung Yuk Shing v PP* [1993] 3 SLR 421. The facts were that the appellant had not been given any food or drink after his arrest and up to the time his CPC s 122(6) statement was recorded, a period of about seven hours. This was held at first instance to have sapped his free will. On appeal, the court remarked that it is a question of fact as to whether the failure to offer an accused food and drink constitutes a 'threat' or an 'inducement' which might render any statement he makes involuntary, there are varying degrees of seriousness as far as such failures are concerned. In the circumstances, the court was not convinced that the omission was so serious that the appellant's will might have been overborne.

49 In contrast, the inherent unreliability of a confession, given the evidence of intensive interrogation for 18 hours, may point to its involuntary character: *PP v Lim Kian Tat* [1990] SLR 364, [1990] 3 MLJ 154. In *Dato Mokhtar bin Hashim v PP* [1983] 2 MLJ 232, for example, the court cited the prolonged periods and extremely odd hours of interrogation ranging into the early hours of the morning as being suggestive of oppression. In addition, the appellant was old (he was 54) and had been deprived of prayer time. Similarly, where the accused was interrogated intensively and denied rest and lunch, was kept ignorant of the charges against him, and the prescribed formalities were breached, the overall impression would be one of doubt as to the voluntariness of the accused's statements: *Tan Choon Huat v PP* [1991] SLR 805, [1991] 3 MLJ 230. Handcuffing of the accused throughout the recording of the statement was a form of restraint and was oppressive as to cast doubts on the voluntariness of the statement: *PP v Mohd Fuzi bin Wan Teh & Anor* [1989] 2 CLJ 652.

50 In the present case, the first accused's CPC s 121 statement (P36) was recorded in two parts, the first being recorded from 12.30am to 2.10am on 14 January 1998 and the second from

5pm to 8pm on 15 January 1998. His cautioned statement (P34) was recorded from 4.12am to 4.24am on 14 January 1998 after he was sent for a pre-statement medical examination. Although P34 and the first part of P36 were recorded in the early hours of the morning of 14 January 1998 (bearing in mind also that the first accused had been arrested at 4.54pm the previous day and had, presumably, not been given any rest since that time), it is clear that the circumstances under which the statements were recorded fell far short of the standard required for a finding of oppression to be made: cf *PP v Tan Boon Tat* [1990] SLR 375, [1990] 2 MLJ 466. Here, a fortiori, it cannot be said that the first accused was in such a state that his will was sapped and he could not resist making the statements which he would otherwise not have made.

19 It was also not disputed that even if the proviso to s 122(5) does not apply, the court has a discretion to admit or to reject the statement of an accused person, see again Rajendran J's judgment in *PP v Dahalan bin Ladaewa* [1996] 1 SLR 783 ("*Dahalan*") at 792 and 793. However, I would add that if the proviso applies there is no discretion and the statement must be rejected.

20 Another area of possible contention regarding the admissibility of statements from an accused person is when the accused person abuses drugs. In *Garnam Singh v PP* [1994] 2 SLR 243, Karthigesu JA said at 247 that in order for the effects of withdrawal from drugs to render any statement a person makes to be involuntary, that person must be in a state of near delirium, that is, "that his mind did not go with the statements that he was making".

21 That passage from Karthigesu JA was cited by Rajendran J in *Dahalan*. Rajendran J said at 801 to 802:

> The DPP drew the attention of the court to the decision of the Court of Appeal in *Garnam Singh v PP* [1994] 2 SLR 243 and referred the court in particular to the following passage in the judgment delivered by Karthigesu JA:
>
> > With due respect to Prof Lee, his evidence fell far short of demonstrating how the effects of withdrawal from drugs affected the appellant's medical and psychological condition. We would conceive that, in order for the effects of withdrawal from drugs to affect the drug user's medical and psychological condition to render any statement he makes to be involuntary, *he must be in a state of near delirium*, that is to say, that *his mind did not go with the statements he was making*. [Emphasis added.]
>
> On the strength of that passage the learned DPP submitted that the court should refuse to admit the statement only if the accused was at the relevant time in near delirium. The DPP again highlighted the evidence of Sgt Lai that the accused appeared normal and pointed out that the accused himself had not given evidence of his being in any way delirious but had only said that he had no recollection of what transpired at the interview with Sgt Lai. He also drew attention to the fact that, far from being delirious, the accused that morning had his wits sufficiently around him to take a taxi and go shopping for gold ornaments with Sanusi.
>
> …
>
> It is true that in *Garnam Singh* the issue before the Court of Appeal was whether the appellant, being a heavy user of drugs, was so affected by the withdrawal from the drugs after arrest that the statement given by him would not have been given voluntarily and was, therefore, inadmissible. But a detailed consideration of that case will show that the appellant had been hospitalized immediately after arrest and had remained in hospital for some five days. It was only after his discharge from hospital that the statement was recorded. The trial judge in admitting

the statement had found that when the accused was discharged from hospital he had recovered from the effects of withdrawal. The Court of Appeal accepted that finding of fact and it was in that context that Karthigesu JA made the statement relied on by the DPP. *Garnam Singh* was, therefore, a very different situation from the present where on the evidence I accept that the statement was recorded at a time when the effect of the erimin was at peak. On the test referred to by Karthigesu JA that 'his mind did not go with the statements he was making' there was in my mind more than a reasonable doubt that that would describe the situation of the accused when he was interviewed by Sgt Lai.

22 The trial judge's decision on admissibility was upheld by the Court of Appeal in *PP v Dahalan bin Ladaewa* [1995] SGCA 87 reported in [1996] 1 CLAS News 75.

23 It seemed to me that while Rajendran J had concluded that the mind of the accused person in that case did not go with the statements he was making, the learned judge stopped short of making a finding that the accused person there was in a state of near delirium.

24 In *Chua Poh Kiat Anthony v PP* [1998] 2 SLR 713, Yong CJ said at [13] and [14]:

> 13 … With respect to the first statement on 3 April 1997, Chua claimed that he was high on drugs. Although his urine sample showed traces of amphetamine, there was no evidence to suggest that he was so drugged or intoxicated as to be incoherent. Some guidance can be drawn from the cases on the test of voluntariness under s 122(5) of the CPC. In *Garnam Singh v PP* [1994] 2 SLR 243, a case on the admissibility of the accused's s 122(6) statement, the Court of Appeal opined that, for the effects of the withdrawal from drugs to affect the drug user's medical and psychological condition such as to render any statement he made involuntary, he must be in a state of near delirium, that is, his mind did not go with the statement made. The court commented that, in a voir dire, the issue was whether the accused's will had been sapped as a result of his addiction and withdrawal from drugs, such that the statement was involuntary. This test of voluntariness was followed in *PP v Dahalan bin Ladaewa* [1996] 1 SLR 783.
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> 14 In the present appeal, Chua could not have been in such a state that his mind did not go with the statement made. Insp Tan testified that, when he recorded Chua's first statement, the latter appeared normal and his sentences were coherent. He did not appear to be high on drugs. As such, I found that Chua's defence of being mistaken at to the content of the two statements did not go to the question of voluntariness but only to the weight to be given to them. I have elaborated further on this point below.

25 A similar proposition was reiterated in *Gulam* ([13] *supra*) by Yong CJ when he was delivering the judgment of the Court of Appeal at [54]. In that case, the court concluded that there was no evidence that the first appellant was anywhere in a state of near delirium.

26 I would respectfully suggest that a drug abuser's mind may not go with his statements even if he was not in a state of near delirium. Thus, a drug abuser may not be nearly delirious but still be in a state of drowsiness or confusion such as to make it unsafe to admit his statement made in such circumstances.

The *Voir Dire* for Ismil

27 The admissibility of the following statements allegedly made by Ismil was in issue:

(a) An unsigned statement to Senior Station Inspector ("SSI") Zainal Abidin Bin Ismail ("SSI Zainal") on 7 May 2005 between 11.10am and 11.20am while Ismil and SSI Zainal were in a car at a carpark at Block 185.

(b) An unsigned statement to SSI Zainal on 7 May 2005 between 11.30am and 11.50am at a briefing room at Jurong West Neighbourhood Police Centre ("JWNPC").

(c) A signed statement to Assistant Superintendent of Police ("ASP") Bahar Bakar ("ASP Bakar") on 7 May 2005 between 12.45pm and 1.20pm at the Volunteer Special Constabulary ("VSC") office at JWNPC.

(d) A signed cautioned statement to Inspector Ang Leong Peng ("Inspector Ang") pursuant to s 122(6) CPC on 7 May 2005 between 8.50pm and 9.45pm at lock-up interview room 4 in Police Cantonment Complex ("PCC"). The interpreter was Mdm Sapiahtun Mohd Ali ("Sapiahtun").

(e) A signed statement to Station Inspector ("SI") Raymond Tan ("the IO") on 11 May 2005 between 2.30pm and 4.45pm at lock-up interview room 7 in PCC. The interpreter was Sapiahtun.

(f) A signed statement to the IO on 17 May 2005 from 10.15am to 12.30pm and 2.35pm to 4.30pm at lock-up interview room 6 in PCC. The interpreter was Sapiahtun.

(g) A signed statement to the IO on 18 May 2005 from 3pm to 5.15pm at lock-up interview room 6 in PCC. The interpreter was Sapiahtun.

(h) A signed statement to the IO on 19 May 2005 between 12pm and 1.15pm outside the deceased's flat. The interpreter was Sapiahtun.

(i) A signed statement to the IO on 19 May 2005 between 1.15pm and 1.25pm outside #04-154. The interpreter was Sapiahtun.

(j) A signed statement to the IO on 20 May 2005 between 3.35pm and 4pm at #04-154. The interpreter was Iskandar Goh ("Iskandar").

(k) A signed statement to the IO on 24 May 2005 between 2.30pm and 4.30pm at lock-up interview room 6 in PCC. The interpreter was Iskandar

(l) A signed statement to ASP Bakar under s 121 CPC on 3 June 2005 between 6.15pm and 7.15pm at an interview room at the office of SIS, CID in PCC.

(m) A signed statement to the IO on 9 June 2005 between 10.30am and 12.55pm and 4.10pm and 6.25pm at lock-up interview room 6 in PCC. The interpreter was Sapiahtun.

For easy reference, a table of Ismil's statements that were in issue is attached in Schedule A. The table includes information on the relevant exhibit numbers and the pages in the preliminary inquiry bundle ("PIB") where the statements may be found, if they are in the PIB.

28 Ismil's challenge to the admissibility of the statements (in [27] above) was based on two broad reasons: (a) the effect of withdrawal from his consumption of Dormicum on 6 May 2005; and (b) threats, inducements and oppressive circumstances.

29 According to Ismil, his highest educational qualification was primary six. He started consuming drugs from the age of 15. He consumed cannabis and sniffed glue. He also smoked opium. He was imprisoned for a month in 1998 for being absent without official leave from national service. From 1989 to 2003, he was sent to a drug rehabilitation centre ("DRC") five times and was placed on long-term detention. Before 6 May 2005, he had been questioned by the police more than five times.[note: 1]

30 Ismil said that in April/May 2005, he would mostly inject himself with Subutex, Dormicum and Dormi or a combination of these drugs for about four to five times daily.[note: 2] Before 6 May 2005, he had been working as a general worker and if he did not take drugs for one or two days, he would be weak, he would have diarrhoea, nausea and bone aches and be confused and not function properly.[note: 3] On 6 May 2005 he had taken six Dormicum pills orally in the morning and at about 9 plus in the morning, he had injected himself with a dose of two pills of Dormicum.[note: 4] Between 1 to 2pm, he injected himself again with drugs at the flat of the girlfriend of a friend Saini Bin Mansor ("Saini").

31 I now set out the circumstances leading to Ismil's arrest.

32 At about 3pm on 6 May 2005, one Yoo Yee Weng ("Yee Weng"), who was operating a handphone business at Boon Lay Shopping Centre ("BLSC") #02-126, discovered that two Nokia mobile phones were missing from a display showcase at his shop. He informed his friend Tan Yi Long Jafred ("Jafred") who was also operating a similar business at #02-198 at BLSC to keep a look out for the phones in case anyone should try to sell the phones to Jafred. At about 4.30pm Jafred called Yee Weng to inform him that a Malay man was in his shop trying to sell a Nokia mobile phone to him. Yee Weng went over and identified that phone as one of the two that had been taken from his display showcase. The Malay man was Ismil. The police were called for. Ismil was standing inside #02-198 when two policemen arrived at about 4.48pm. He admitted to the police that he had stolen the mobile phone in question and was arrested at about 5.30pm. Ismil was then brought to Jurong Police Division Headquarters.

The Cantonment threat

33 The next day, 7 May 2005, SSI Lai Chun Hong ("SSI Lai") and Inspector Steven Wee ("Inspector Wee") from SIS, CID, interviewed Ismil at Jurong Police Division Headquarters at about 5.55am. The interview was carried out at the request of the IO who had learned about Ismil's arrest for theft. During the interview, Ismil said he did not know of any murder at Block 185 and denied any involvement in the murder.

34 Inspector Wee said he noticed that Ismil was staggering as he was brought out from the lock-up but he did not appear intoxicated.[note: 5] Ismil had had a swollen right ankle although he was able to walk. Ismil said he had fallen while cycling a few days ago. There were some scratches on one of his upper arms which Ismil said were also sustained from his fall while cycling. Inspector Wee observed Ismil to be restless and tired with bloodshot eyes and a little slurred in his speech. He suspected that Ismil might then be under the influence of drugs. Inspector Wee described Ismil as unresponsive in that the same questions had to be asked a few times before he would give a response.

35 SSI Lai and Inspector Wee denied that they had applied pressure on Ismil to get him to confess that he was involved in the deceased's murder. Ismil's version was that SSI Lai had muttered to him "wait until you get to Cantonment and then you will know, and we can talk" or words to that effect.[note: 6] I will refer to this allegation as "the Cantonment threat". Both these officers denied that the Cantonment threat was made. They also denied that SSI Lai had told Ismil that many people had seen the murder of the deceased and it was like a "wayang" which is a Malay word for a show. Inspector Wee also denied that he had told Ismil that Ismil was associated with a taxi stand murder. As I mentioned, Ismil had denied any involvement with a murder at Block 185.

36 Ismil said that he was questioned by two Chinese police officers in the early hours of 7 May 2005. They said they wanted to check his DNA. If his DNA was positive the officer who said this threatened to slap him on the face.[note: 7] They asked him whether he knew about a murder case at his block of flats and one at a taxi stand. They mentioned there were many people who witnessed the murder at his block of flats and it was like a "wayang". He said they made the Cantonment threat.

37 Ismil initially said he did not know what the reference to "Cantonment" meant at the time the Cantonment threat was made[note: 8] but in cross-examination, he said he knew it referred to a police station[note: 9]. It was not disputed at the trial that the office of SIS, CID was and is at PCC.

38 Ismil said that he was fearful of being assaulted if he was brought to Cantonment.[note: 10] The officers were very fierce and he was in pain and had a craving for drugs. He had been assaulted by CID officers before, although this was supposedly clarified to be Central Narcotics Bureau ("CNB") officers instead.[note: 11] He told the two Chinese police officers that he was feeling cold and he knew about a theft case only. He did not know anything about a murder.[note: 12] His bones and joints were aching, he was shivering, he felt weak, he felt like vomiting and also he had to go to the toilet many times. His mind was in disarray and he was confused. It was also Ismil's evidence that he was suffering from withdrawal symptoms between the period when the alleged statements were recorded, *ie*, between 7 May 2005 to 9 June 2005 and his condition had been deteriorating generally until he was first admitted for a psychiatric assessment on 27 May 2005.[note: 13] Also, the Cantonment threat was still in his mind when his subsequent statements were recorded in that period.[note: 14]

Ismil's unsigned statement to SSI Zainal on 7 May 2005 between 11.10am and 11.20am

39 Tiu Kian Chai, also known as Denis Tiu, was a police officer holding the rank of a sergeant. At the time of the trial, he was no longer with the police force. On 6 May 2005, he was performing the duty of Senior Investigation Officer at Jurong Police Division Headquarters. At about 8.50pm of 6 May 2005, he was informed about Mdm Tham's murder. He went to her flat and returned at about 4.20am of 7 May 2005. He went through various arrest reports and noted that Ismil was staying one floor below the deceased's flat. It was he who informed the IO about this and the IO said he would get officers from SIS, CID, to interview Ismil. These officers were SSI Lai and Inspector Wee whom I have referred to. Mr Tiu said he saw Ismil in the lock-up at about 4.50am (before the interview by the CID officers at about 5.55am). He noticed Ismil was limping and he appeared tired[note: 15]. However, Ismil did not appear unwell nor did he complain about being unwell.[note: 16] After the interview by the CID officers, Ismil was handed back to Mr Tiu at about 7.35am. Ismil appeared alright then.[note: 17] At about 9.20am, Mr Tiu told the IO he was bringing Ismil to #04-154 for further investigation into the offence of theft of the mobile phone. Mr Tiu said Ismil did not tell him that Ismil was cold while in the lock-up.[note: 18]

40 At about 10.45am of 7 May 2005, Mr Tiu and another officer reached the car park of Block 185 with Ismil. SSI Zainal and other officers from CID were also in the vicinity of the car park. SSI Zainal then entered the car they were in and asked the two officers to leave as he wanted to interview Ismil. They did as directed, leaving SSI Zainal seated with Ismil in the rear of the car. This was at about 11.10am.

41 SSI Zainal said that his interview with Ismil was conducted in Malay. It was between 11.10am and 11.20am. During that interview, Ismil initially said he could not remember anything and then confessed to having attacked the deceased. SSI Zainal said he wrote this confession down on a piece of paper, which was Exhibit P152. It stated:

> At C/P of Blk 185 B/L, interview suspect Ismil B. he said he remember slashing an old f/Chinese on Fri morning.

This was the first of Ismil's statements in issue. SSI Zainal said Ismil was alert and had responded to his questions promptly. Ismil was shaking his two legs.[note: 19] However, SSI Zainal denied that Ismil had told him he was "sakit", which is a Malay word to mean he was ill, or that Ismil had indicated that he was suffering from withdrawal symptoms.

42 At the time of that interview, SSI Zainal was aware that a fingerprint had been found in the deceased's flat although he did not know whose fingerprint it was. He said that he had asked Ismil during the interview what if his fingerprint was found and it was in response to this that Ismil admitted he had stabbed an old female Chinese on Friday morning, *ie*, 6 May 2005.

43 Ismil said that at about 10.50am of 7 May 2005, he was sitting alone in a police car at Blk 185 when he was questioned by a Malay police officer, *ie*, SSI Zainal. He denied any involvement with the murder at his block but was told that his fingerprints were found at the deceased's flat. He considered this a threat.[note: 20] His evidence was that he said, "If yes, yes, if not, not" or words to that effect. SSI Zainal also told him there were two people in the deceased's flat and he considered that information a threat as well.[note: 21]

Ismil's unsigned statement to SSI Zainal on 7 May 2005 between 11.30am and 11.50am

44 After the interview in the car that morning, Ismil was brought to a briefing room at JWNPC

where SSI Zainal had a second interview with him between about 11.30am and 11.50am. According to SSI Zainal, Ismil was more relaxed. He was not shaking his legs.[note: 22] Ismil told him at JWNPC that he had gone to the deceased's flat to borrow money and that he had taken a knife from the deceased's flat. Ismil also told him that there was an old man lying in a bed in the deceased's flat. Ismil also said he had acted alone. Most of the elaboration and the alleged admission in the car were recorded much later after lunch by SSI Zainal in his field diary, Exhibit P153, but on the same day.[note: 23] The material entries stated:

> 1110 As directed by ASP Goh Tat Boon, at C/park of Blk 185 Boon Lay, Interview one:-
>
> Ismil B. Kadar (DOB: M/37)
> NRIC No.: S6813242H
> Blk 185 B/Lay Ave #04-154
>
> Inside marked police car. S/Sgt Toh Chin Hoe (95473) and Sgt 96869, Tiu Kin Chai stood outside. I commence to interview the subject concerning the case and he claimed that he could not remember anything. Subsequently, he told me that he had stabbed an old F/Chinese lady on Friday morning at Blk 185 Boon Lay Ave.
>
> Subsequently ASP Goh Tat Boon and ASP Ng Poh Lai joined me in the police car.
>
> 1120 …
>
> 1130 At Jurong West NPC. Subject was brought to the briefing room. I commenced to interview him again. The subject added that he went to the deceased's house that morning to borrow some money. He also said that he took the knife from the deceased's house and added there was an old man lying on the bed.

45 I would add that on that day, SSI Zainal's field diary remained in his office at PCC while he was at the carpark of Block 185 and at JWNPC. He said he had not brought his field diary with him as he was not the investigating officer of the murder case.

46 SSI Zainal also denied that at JWNPC Ismil had told him that he was cold.[note: 24]

47 Ismil said that when he was at JWNPC, he was questioned by SSI Zainal and other police officers. He claimed that they were forcing him to tell them about the murder but he told them he did not know anything about the murder case. They were torturing and pressurising him.[note: 25] By torture, he meant that much stress and pressure was applied on him.[note: 26] He said he told the officers he was feeling sick, cold and confused.[note: 27] Ismil's evidence was not confined to the time when he was alone with SSI Zainal at JWNPC. It included the time when other officers were in the room before Ismil was eventually brought to another room, *ie*, the VSC office where ASP Bakar was waiting to record a statement from him.

48 Between 12.10pm and 12.25pm, Ismil's fingernails were clipped by a forensic management officer and between 11.50am and 12.40pm, various officers, that is, SSI Soh Eng Seng, SI Teh Hwee Cheng and Inspector Wee were in the same room with Ismil although not necessarily throughout the same duration. Ismil said that although the Cantonment threat was not repeated on this occasion by these other officers he took the threat seriously. However, he still did not admit to any involvement in

the deceased's murder then.[note: 28]

Ismil's signed statement to ASP Bakar on 7 May 2005 between 12.45pm and 1.20pm

49 At about 12.40pm of 7 May 2005, Ismil was handed over to ASP Bakar who thereafter recorded a statement from him under s 121 CPC. This was done between 12.45pm and 1.20pm at the VSC office at JWNPC. Ismil spoke to ASP Bakar in Malay. Ismil signed below the statement which was Exhibit P154. The entire statement was in issue in the *voir dire*. ASP Bakar's request for information and Ismil's statement were recorded as follows:

> I am conducting a Police investigation into the murder of Tham Weng Kuen alleged to have been committed on 6 May 2005 at Blk 185 Boon Lay Ave #05-156. What do you know about the facts of this case?
>
> I was in need of money and my intention was to borrow some money from "Ah Soh". She is the house owner and staying with her husband. I went there at about 10.00 am plus. The house door and the grille gate were closed. I knocked on the door. "Ah Soh" opened the door and the grille gate. I asked her in Malay to lend me some money. "Ah Soh" looked at me and she said she did not know me. I told "Ah Soh" that I am staying on the 4th floor. "Ah Soh" raised her voice and told me that she did not have money. I became angry. My intention was not to cause harm to her. I went into the house and went into the kitchen. I took a knife and held it with my right hand. My intention was just to scare her so that she could give me money. I asked her again for money with the knife but she still refused to give. She also shouted at me. Out of sudden, there was a struggle and "Ah Soh" grabbed my right hand. During the struggle, I accidentally stabbed her. "Ah Soh" continued to shout loudly. We struggled for a while and I could not remember how many time I stabbed "Ah Soh" with the knife. After that, I noticed "Ah Soh's" husband lying on his bed in one of the bedroom. I became afraid and quickly left the house. I returned home and changed my clothing. Thereafter, I left my house. I have no intention to harm her. At that time, I was "high" as I had consumed some sleeping tablets.

50 Ismil had also signed on the next page of the statement whereby he affirmed the statement to be true and correct and that no threat, inducement or promise had been rendered to him during the recording of the statement.

51 ASP Bakar said Inspector Wee had given a briefing at about 9am of 7 May 2005 and during the briefing, Inspector Wee had said Ismil seemed to be "high" and was not responsive to questions earlier that day.[note: 29]

52 ASP Bakar said he had asked Ismil to be truthful when he asked Ismil what he knew about the murder of the deceased.[note: 30] Ismil appeared normal, calm and responsive.[note: 31] He did not appear high then.[note: 32] ASP Bakar also denied that Ismil had complained of being hungry or that he was sick.[note: 33] Ismil had no complaint.[note: 34]

53 It was Ismil's evidence that when he was brought to see ASP Bakar, he had initially denied involvement in the murder.[note: 35] He told ASP Bakar that he had not taken his meal yet and that he was sick and the room was very cold. ASP Bakar told him that he should give his statement first and then he would be allowed to eat. ASP Bakar also looked fierce.[note: 36] Ismil did not deny signing

the statement. He said he had no choice because of the pressure he faced and the officers refusing

to believe his denials.[note: 37] The pressure was due also to his fear of being assaulted arising from the Cantonment threat. He believed the Cantonment threat because he had experienced it before.[note: 38] Part of the substance of the statement came from suggestions from ASP Bakar[note: 39] or Ismil had lied in part of his statement.[note: 40] His mind was in a mess and he was weak.[note: 41]

Ismil was brought to #04-154 and then to PCC

54 At about 1.25pm the same day, Ismil was handed over to SSI Soh Eng Seng, SI Teh Hwee Cheng and Inspector Wee. Thereafter, he was brought to #04-154 during which ASP Bakar, who was also present there, asked him questions. According to Senior Staff Sergeant ("SSSGT") Chandra Seakaran ("SSSGT Chandra"), who was one of the escorting officers at that scene, Ismil looked calm and appeared quite responsive to questions posed by ASP Bakar. Ismil was not exhibiting any discomfort.[note: 42] He did not notice Ismil limping.[note: 43] According to the IO who was also present then at that scene, Ismil looked calm, alert and responsive.[note: 44] The IO did not notice Ismil having a running nose or shivering or exhibiting any discomfort.[note: 45]

55 At about 3.10pm, Ismil was brought from #04-154 to PCC. He and the escorting officers arrived at PCC at about 3.40 pm. Ismil was given a hot drink and biscuits and at about 4.35pm, he was brought to a lock-up at PCC. According to SI Teh Hwee Cheng, Ismil had said in the car on the way back to PCC that he had not eaten.[note: 46]

56 Ismil accepted that he was brought to #04-154 from JWNPC. However, he said that whilst there, ASP Bakar had threatened him by asking him where he had put the red shirt he had worn during the murder.[note: 47] Ismil also perceived ASP Bakar's warning to him not to speak to his family as a threat.[note: 48] Thereafter he was brought to PCC. He said he had mentioned again in the car on the way back to PCC that he was hungry. Back at PCC, he again said he had not had his lunch. He was then given a cup of Milo and biscuits. This was close to 4pm. As his hands were in restraints he said he felt helpless and it seemed that the officers could do whatever they liked to him. He could not even hold the cup or eat properly. He felt he was being treated like an animal and he felt cold. The escorting officers were also having their own meals at PCC.[note: 49] He was brought to the lock-up thereafter.

Pre-statement medical examination

57 At about 4.55pm of 7 May 2005, Ismil was taken from the lock-up at PCC to Alexandra Hospital ("AH") for a pre-statement examination before he was invited to give a statement under s 122(6) CPC. The party arrived at AH at about 5.15pm. At about 6pm, Ismil was examined by Dr Cheong Hong Fai ("Dr Cheong") who spoke to him in English. Dr Cheong issued a report dated 21 June 2005 of that examination. The material part stated:

> History of the patient was as follows:-
>
> The patient was sent for medical examination by the police (pre-recording of statement). He complained of generalize unwell for 3 days. There was associated nausea. He denied any cough, cold, fever, abdominal pain, diarrhea or dysuria. He had no other complaints.
>
> Clinical examination revealed the following:

There were superficial abrasions noted on his chin and in front of his right ear. He claimed these were self-inflicted scratch marks. A 1.5cm scab was noted on his right arm. He claimed this was due to a self-inflicted needle wound. A 2cm diameter abrasion was also noted on his right knee. He claimed this was due to a fall. No other visible injuries were noted.

There was no alcoholic breath and no injected conjunctiva. Pupillary size was normal and equal, and pupillary reaction to light was normal. There was no flushing of face, no slurring of speech, no verboseness and no incoherent speech. Straight line walking was fair and gait was steady. There was no nystagmus.

He was found to be in fair condition without any likely danger to his life. He was fit for detention.

58 Dr Cheong said that Ismil did not make any specific complaint although he had said he was unwell. For example, Dr Cheong had asked whether Ismil had any cough, cold, fever or abdominal pain but Ismil was unable to confirm any of this. Dr Cheong said he had mentioned nausea as Ismil said that he felt like vomiting. As far as Dr Cheong could remember, Ismil was alert and comfortable.[note: 50] Although Ismil had mentioned he was unwell, Dr Cheong did not think he needed to be admitted to hospital. As for Ismil's nausea, Dr Cheong said he was unaware that someone with drug withdrawal symptoms would have this complaint but he accepted it might be possible. However, Dr Cheong did not notice any running nose or shivering from Ismil.[note: 51] Dr Cheong said that he did not recall Ismil having told him he was in pain.[note: 52]

59 Ismil said he was able to understand Dr Cheong who spoke to him in simple English. He said he told the doctor he was a drug addict and his bones felt painful and he felt like vomiting. He said he did not mention any other complaint because he had difficulty expressing himself or comprehending the doctor unless the doctor spoke in simple English.[note: 53] He spoke in a mixture of English and Malay to the doctor.[note: 54] Also, he wanted to tell the doctor how he had been pressurised by CID officers and that he did not commit any murder but he did not say so to the doctor because of the presence of escorting officers in the same room.[note: 55]

60 In cross-examination, he said he had no complaints physically when he saw Dr Cheong but he was mentally stressed.[note: 56] Dr Cheong had not asked him if he had any complaints.[note: 57]

61 Ismil said he was feeling very cold in Dr Cheong's room but he did not inform Dr Cheong. He said Dr Cheong should know he would feel cold as he had told Dr Cheong he was a drug addict.[note: 58]

Ismil's signed cautioned statement to Inspector Ang on 7 May 2005 between 8.50pm and 9.45pm

62 After the pre-statement examination, Ismil was brought back to PCC at around 6.45pm. Later, Inspector Ang recorded a cautioned statement from Ismil pursuant to s 122(6) CPC in room 4, PCC lock-up between 8.50pm and 9.45pm. He was assisted by Sapiahtun who was interpreting in the Malay language. A charge of murdering Mdm Tham on 6 May 2005 between 8am and 7.49pm at the deceased's flat was read out to Ismil with the usual caution. Ismil was then recorded as stating:

I took sleeping tablets and I was not my normal self. I do not have the intention to kill her. I just wanted to threaten her. She grabbed my right hand. I do not have the intention to stab her. It doesn't make sense to kill an old woman like her.

63 Inspector Ang said that Ismil looked normal to him and Ismil had not made any complaint during the recording of the statement.[note: 59] He also said that if he had noticed Ismil having any withdrawal symptoms, he would not have continued recording his statement.[note: 60]

64 Sapiahtun was initially uncertain but eventually agreed that Ismil had told her that the room was cold.[note: 61] She had opened the door a bit to let the air go out as the temperature could not be adjusted because of central air-conditioning. She then asked him if that was "okay" and he replied, "okay". Although the room was quite cold, she did not notice Ismil shivering.[note: 62] Neither did she recall Ismil saying that he was cold because he was suffering from drug withdrawal.[note: 63]

65 Ismil said his condition had worsened by then.[note: 64] He said that when Sapiahtun opened the door of the room ajar, it did not increase the temperature in the room. He told her he still felt cold.[note: 65] Sapiahtun asked him to sign a piece of paper containing a charge. He declined because he noticed a charge relating to section 302. He said that she insisted he sign and he still refused. He had noticed the punishment (of death) stated at the bottom of the charge.[note: 66] Even if the possible sentence was less harsh he would not sign on the charge because he did not commit the offence of murder.[note: 67] She threatened him that if he did not sign, the court would take action against him. He thought this threat of action being taken against him was as serious as the murder charge.[note: 68] She then said that if he were to sign, the charge could be reduced. As he had committed theft, he decided to sign, thinking his charge would be reduced to one of theft.[note: 69] The only reason why he signed the cautioned statement in addition to signing below the charge, was because of Sapiahtun's inducement about the reduction of the charge.[note: 70] I will refer to this as "Sapiahtun's inducement". As he was still suffering from pain, confusion and cold, he had no choice but to lie by making the cautioned statement.[note: 71]

66 He trusted Sapiahtun but he did not tell her or Inspector Ang that he was innocent of the murder because he perceived them to be CID officers and he was exhausted.[note: 72]

Post-statement medical examination

67 After Ismil had given his cautioned statement, he was brought back to AH for a post-statement medical examination. Dr Cheong examined him at about 10.35pm. He issued a report dated 21 June 2005 on this examination. The material part of that report stated:

> The patient was sent for medical examination by the police (post-recording of statement). He complained of buttock pain. He claimed this was due to long duration of sitting. He also complained of leg pain due to the presence of the cuffs. He denied any other new injuries or discomfort after the police interview.
>
> Clinical examination revealed the following:
>
> There were superficial abrasions noted on his chin and in front of his right ear. He claimed these were self-inflicted scratch marks. A 1.5cm scab was noted on his right arm. He claimed this was due to a self-inflicted needle wound. A 2cm diameter abrasion was also noted on his right knee. He claimed this was due to a fall. No other visible injuries were noted.
>
> There was no alcoholic breath and no injected conjunctiva. Pupillary size was normal and equal,

and pupillary reaction to light was normal. There was no flushing of face, no slurring of speech, no verboseness and no incoherent speech. Straight line walking was fair and gait was steady. There was no nystagmus.

No new injuries were found.

He was found to be in fair condition without any likely danger to his life. He was fit for detention.

Ismil did not give any evidence-in-chief about the post-statement examination.[note: 73]

8 May 2005

68 When Ismil was brought to court the next day, *ie*, 8 May 2005 and charged with murder, he said he was shocked and confused and sick. He was angry. I should add that Ismil also eventually said that he had had diarrhoea in the morning of 8 May 2005.[note: 74] He was disappointed with Sapiahtun.[note: 75] He had no chance to tell the court about mistreatment by CID officers. There were CID officers all over the place. His mind was disturbed.[note: 76] However, it was his evidence that Sapiahtun's inducement continued to operate on his mind between 7 May 2005 to 9 June 2005.[note: 77]

69 Ismil's position was that he was still fearful of being assaulted as he was in the clutches of CID even though he had cooperated with CID so far.[note: 78]

Ismil's signed statement to the IO on 11 May 2005 between 2.30pm and 4.45pm

70 I come now to Ismil's statement on 11 May 2005 to the IO with Sapiahtun as the interpreter. The statement was recorded in room 7, PCC lock-up between 2.30pm and 4.45pm. It stated:

Question: What do you know about the fact of the case?

Answer: On 6 May 2005 at about 8.30 am. I woke up and noticed that my younger brother, Mamat was still sleeping in our room. I then went to the kitchen to take water. As I was at the living room, I noticed that my mother room door was slightly ajar and I did not know whether she was at home. As I was in the kitchen, I poured a cup of water and brought it to my room. When I was in my room, I swallowed 6 tablets of "*Domician*" (sleeping pills) with water. Next, I grinded 2 tablets of "Domician" into powdery form and added it with hot water which turned into liquid form. Following that, I placed the liquid into a syringe and *jabbed* it into my left upper arm. Thereafter, I rested and *relaxed* in the bedroom and shortly I became "*steam*" (accused further explained that "steam" means "*high*").

2 At about 10.00 am. I left the house. My younger brother was still sleeping in the bedroom and I did not see my mother in the house but her bedroom door was slightly ajar. I remembered that I was wearing a shorts [*sic*] when I left the house but I could not remember the colour and design of the shorts. I also did not know what I was wearing on my upper body but I am sure that I wore something. I remembered wearing a cap. I could not remember the colour of cap that I was wearing. I could not remember whether I have brought anything

along with me.

3 Next, I wore my slippers that were placed along the corridor outside my house. Next, I turned right and climbed up the staircase. Next thing I remembered, I was inside my Chinese neighbour's house. I did not know the unit number or the floor which my Chinese neighbour was staying. I also did not know how I managed to enter my neighbour's house.

4 When I was inside my neighbour's house, I saw an elderly Chinese woman whom I recognised her as my neighbour who lives on the 5th floor near the staircase. I then spoke to her in Malay and I asked her to lend me some money. She replied me in Malay and said that she did not have money. She raised her voice when replying me. I got angry and *fed-up* over her raised voice. I could not remember which part of the house we were in. I then went to the kitchen and took a knife from a shelf. My intention was to use the knife to scare her, so that she would give me her money. I then approached and pointed the knife at the elderly woman and asked her in Malay to give me her money. I could not remember which part of the house we were in then. I was then holding the knife in my right hand. Next, she held my right wrist with both her hands and she uttered something which I could not remember now. I then tried to pull my hand away from her but she held my wrist very tightly. Suddenly, she let go one of her hands and I accidentally pushed the knife forward and stabbed her. I could not remember where I had stabbed her. After stabbing her, all I could remember was that I left the house. I walked down the staircase and returned to my house. I could not remember how I entered my house.

Stopped at 4.30 pm.

The above statement was read and explained to Ismil Bin Kadar in Malay by the interpreter. He affirmed the contents of the statement are true and correct.

71 According to the IO the words in inverted commas or in italics were the actual words used by Ismil. The IO spelt Dormicum wrongly in the statement because at that time the IO was not certain about the spelling for that drug. The IO said that most of the time during this session, Ismil said he could not remember what he did in the deceased's flat.[note: 79] He found Ismil to be forthcoming, calm and alert. Ismil did not appear unwell to him.[note: 80] Sapiahtun also said Ismil appeared normal that day. He did not appear unwell or in pain or in fear.[note: 81] Ismil's position was that the session was actually in a question and answer format but Sapiahtun disagreed. Ismil's position was also that he felt compelled to agree to suggestions made by the IO owing to threats and inducements extended to him earlier. However, Sapiahtun denied the IO had made several suggestions. Sapiahtun said she was not aware of any threat or inducement to Ismil.[note: 82]

72 Ismil said that when he was questioned by the IO, he was still experiencing withdrawal symptoms and his mind was not alert. He was also afraid that he would be beaten up because he was remanded at PCC and because of the Cantonment threat.[note: 83] He initially said he signed the statement because of pressure from officers who refused to accept his denials but then said he signed because of Sapiahtun's inducement to reduce the charge and because he was afraid something would be done to him.[note: 84]

73 He did not ask Sapiahtun about the reduction of the charge as he thought he should just "follow", *ie*, do what was expected of him.[note: 85] He still trusted Sapiahtun.[note: 86] He then said he had forgotten to ask her about the reduction of the charge. He had forgotten about Sapiahtun's inducement then.[note: 87] He then reverted to say he had not forgotten that day.[note: 88] He agreed that he had met Sapiahtun on subsequent occasions when she also acted as interpreter but he did not ask her about the reduction in the charge because he was very sick, confused and pressured and the interview room was cold. He was feeling terribly weak.[note: 89]

12 May 2005

74 On 12 May 2005, Ismil was interviewed by SSI Mazlan Bin Shariff ("SSI Mazlan") and ASP Bakar at an interview room in the office of SIS on the 18th floor at PCC. The interview was between about 4.05pm to 5.45pm[note: 90] and ASP Bakar was present until about 4.45pm.[note: 91] Although the prosecution was not relying on a statement made by Ismil at this interview to SSI Mazlan, after ASP Bakar had left, this session had some relevance to the *voir dire*. Ismil's position was that ASP Bakar was never present at this interview.

75 The interview was conducted at the request of ASP Bakar who said he wanted to find out if anyone else was involved in the murder and to obtain information about the theft of the mobile phones. ASP Bakar said the IO was not involved in this interview as the IO was engaged in other matters.[note: 92] ASP Bakar denied the defence's suggestion that the IO was excluded so that SSI Mazlan could exert threats on Ismil so as to soften him up. He also denied that SSI Mazlan was used as an enforcer to obtain incriminating evidence from Ismil.[note: 93]

76 Ismil said he was frightened because SSI Mazlan had been aggressive. SSI Mazlan had been smoking a brand of Next cigarettes in the room and his face looked aggressive. SSI Mazlan told him not to waste his time.[note: 94] Ismil was still experiencing withdrawal symptoms which had gotten worse and was confused and unable to focus.[note: 95] He told SSI Mazlan he did not know anything about the murder.[note: 96]

Ismil's signed statement to the IO on 17 May 2005 between 10.15am and 12.30pm and between 2.35pm and 4.30pm

77 Ismil's statement of 17 May 2005 was recorded by the IO with Sapiahtun as interpreter in room 6, PCC lock-up between 10.15am and 12.30pm and between 2.35pm and 4.30pm. The material part of the statement stated:

> 6 When I was at my house after stabbing my Chinese neighbour, I changed my clothing, a T-shirt and a shorts to a new set of clothing. I could not remember the colour of my T-shirt and shorts that I wore while stabbing my neighbour. Anyway, I hung them behind the bedroom door. …I *relaxed* for about 15 minutes, my second elder brother Hathinin Bin Kadar came. He is staying at West Coast and I addressed him as "Hat".
>
> 7 I then asked "Hat" whether he had money and *drug*. He replied no and I suggested to him that we would go *shopping* and steal *handphone* and then to sell them for money. A while later which was less than half an hour after "Hat" arrived, together with "Hat", I left the house and walked to Boon Lay Shopping Centre. We went to the second floor and walked around. When I walked past a handphone shop, I noticed that there was nobody manning a showcase displaying handphones situated outside the shop. I also noticed that the sliding glass door of the showcase

was not closed. "Hat" and I then walked to the showcase and pretended to look at the handphones. At this point, I stretched my right hand over to the other side of the showcase and pushed the sliding door wider. Next, I took two "Nokia" handphones from the showcase and left the shop with "Hat". One is a white handphone while the other was blue. I then gave "Hat" the white handphone and I kept the blue handphone. Thereafter, we went back to my house.

…

10 I wished to add that on that same day at about 11.00am Sani, "Hassim" and "Mamat" were at my house and they told me that they wanted to go and buy "Dormicum". I then gave "Mamat" S$15/- to buy 5 tablets for me. At this point of time, "Hat" had not arrived at my house. I could not remember what time "Sani" and "Hassim" came to my house that day but I remembered that they came with "Mamat". They came after I had stabbed my Chinese neighbour.

Stopped at12.30pm for lunch break.

Continue statement recording at 2.35pm at lock up interview room 6

…

12 An hour later, I left the house to sell the stolen blue Nokia handphone. I walked to Boon Lay Shopping Centre and went to the second floor. I went to another handphone shop and wanted to sell the stolen handphone. I showed the stolen handphone to a male staff and told him that I wanted to sell my handphone. He took the handphone and examined it. Next, I saw him making a call using his shop telephone. Short while later, another male Chinese came into the shop. I recognised him as the owner of the shop where I stole the handphone. The said Chinese then examined my handphone and told me that it was his handphone. He asked me whether I had stolen his handphone. I told him that I had stolen his handphone. Next, he called the police. Shortly, the police came and I admitted to the police that I had stolen the handphone when I was questioned. I was then handcuffed and brought Jurong Police Station.

13 On Saturday morning, when I was still in the police custody at Jurong Police Station, two Chinese CID officers interviewed me regarding a murder case at Blk185 Boon Lay Ave. They asked me whether I know anything about the murder case. I told them that I did not know anything about the murder as I was *high*. Shortly, they left.

14 Later in the day, the Jurong investigators brought me back to my house for investigation in a police car. At the moment, I was having a *hangover* due to the drug that I had taken the day before. When they reached my house car park, a Malay CID officer came and sat inside the police car with me. The said male CID officer asked me whether I know anything the murder case reported yesterday. At that moment, I was slightly sober than the time when I was interviewed by the two Chinese CID officers at Jurong Police Station. I admitted to the Malay officer that I had stabbed my Chinese neighbour the day before but I had no intention of killing her. Following my admission to the Malay officer, the police brought me to another police station (Jurong West NPC) where they took my fingernails clippings. At the same police station, I had given a voluntarily [*sic*] statement to another Malay police officer, ASP Bahar.

15 After the recording of the statement by ASP Bahar, I was escorted back to my house for investigation. When I reached my block, I noticed that there were many reporters outside my house. They took photographs of me. In my house, the police took away the clothings that were hung behind my bedroom door. They also seized a maroon cap which I worn when I stabbed my

neighbour. Thereafter I was brought to CID.

The following questions were posed to me

Q1: Beside using a knife to stab the deceased, did you use other thing to hurt her?

A1: I do not know and I could not remember.

Q2: Who else was in the house when you stabbed the deceased?

A2: Her sickly husband was in the bedroom and he was lying on the bed.

Q3: Where were you when you saw her sickly husband?

A3: I was in *hall* and I could see him lying on the bed as the bedroom door was opened.

Q4: Did you go into bedroom where the sickly husband was lying?

A4: I could not remember.

Q5: Did you do anything to the sickly husband?

A5: I could not remember.

Q6: Did you take anything from the house?

A6: I do not know as I was too high.

Q7: Did you use a chopper to hurt the deceased?

A7: I do not know as I was high.

Q8: At any time, did the deceased shouted for help?

A8: I could not remember.

Q9: How you entered the deceased's flat?

A9: I knocked at the door and the deceased opened the door and gate.

Q10: What was you purpose of knocking at the deceased's house?

A10: I wanted to borrow money from her.

Q11: Prior to this incident, how many times did you go to the deceased's house?

A11: This was the first time I went to the deceased's house.

Q12: Prior to this incident, did you ever talk to the deceased?

A12: I did not talk to her before.

Q13: Did you tell anyone that you have stabbed the deceased?

A13: I did not tell anybody.

78 The IO said that the earlier statement of 11 May 2005 ended with Ismil stating that he had gone back home after stabbing the deceased. Hence, the purpose of recording a further statement on 17 May 2005 was to record what Ismil had done when he returned home.[note: 97] The words in italics were the actual words used by Ismil who was cooperative, responsive and alert.[note: 98] Sapiahtun said Ismil was normal.[note: 99]

79 Ismil's position was that the entire taking of the statement was in the form of a question and answer but this was denied by the IO and Sapiahtun.[note: 100]

80 Ismil described the IO as being very fierce that day and the IO would not believe whatever he said. The room was cold and he was still suffering from withdrawal symptoms which had become worse. He could still remember the Cantonment threat.[note: 101] He provided a statement because he was hoping to be spared any physical abuse.[note: 102]

Ismil's signed statement to the IO on 18 May 2005 between 3pm and 5.15pm

81 Ismil's statement of 18 May 2005 was recorded by the IO with Sapiahtun as interpreter in room 6, PCC lock-up between 3pm and 5.15pm. The material part of the statement stated:

Q16: You mentioned that you saw the deceased's sickly husband lying on the bed in the bedroom. What else did you see inside the room?

A16: I am not sure. He was lying on the bed with his legs pointing at my direction when I saw him. I was "*high*" then.

Q17: What did the deceased's sickly husband do, when you saw him?

A17: He was lying on the bed not doing anything with his eye opened. I also do not know whether I have done anything to him. I think he is sickly. I am not sure whether he had seen me.

Q18: Can you describe the interior of the deceased's house?

A18: I was very "high" and I could not remember the interior of her flat.

Q19: Did you search the deceased's house?

A19: I do not know and I could not remember.

Q20: After consuming 8 tablets of "Dormicum" in the morning, how many "Dormicun" tablets do you have before you gave "Mamat" S$15/- to help you to buy 5 "Dormium" tablets?

A20: I have no more "Dormicum" tablet left after taking the 8 tablets in the morning.

Q21: Did "Mamat" give you 5 "Dormicum" tablets?

A21: Yes, he did. I have taken 2 tablets at Sani's girlfriend house. When I was arrested, I left with 3 tablets.

Q22: How much money did you have before you went to the deceased's house?

A22: I had about $21/-

Q23: Did you wash your hands inside the deceased's house?

A23: I did not know and I could not remember.

Q24: What was the colour of the slipper that you wore to the deceased's house?

A24: I did not know. When I was arrested I was wearing a pair blue slipper and I also do not know whether I wore the same slipper to the deceased's house.

Q25: How many slippers did you have?

A25: I have two pairs. One is blue and the other is white.

Q26: Did you wear your slipper into the deceased's house?

A26: I do not know and I could not remember.

Q27: What was the deceased's wearing when she opened the door for you?

A27: I do not know and I could not remember. I was "*high*" then.

Q28: Did the deceased unlock the gate lock or pad lock when you knocked her door?

A28: I could not remember.

Q29: Do you know the deceased and her family members?

A29: I do not know them.

Q30: What can you remember doing inside the deceased's house?

A30: What I can remember was I took a knife from her house and I pointed it at her to scare her. I asked her for money one more time and she raised her voice. She then held my right wrist with both hands. I was holding the knife in my right hand. There was a *struggle* and she let go one of hands and I accidentally stabbed her. I did not know where I stabbed her.

Q31: Why did you not confess to the Chinese CID officers at Jurong Police Station when they interviewed you regarding this murder case?

A31: At that time, I was *high* and I was shocked when the officers told me that an old woman was found murdered at my block. It did not cross my mind that the deceased was the same woman whom I stabbed. I just replied to the officers that I did not know anything about the murder.

Q32: What make you confess to the stabbing of your neighbour to the Malay CID officer?

A32: He told me that an old woman was found murdered in her house and my fingerprint was found in the house. Upon hearing that, I knew that the CID knows that I had stabbed the deceased. I then confessed to him that I stabbed the old woman. Even if the officer did not tell me that my fingerprint was found there, I would still confess to the offence. This is because I had stabbed her accidentally.

Q33: Did the CID officer tell you who the deceased was?

A33: They did not tell who the deceased was. They just told me that there was a murder.

82 The IO said Ismil was cooperative, responsive and alert on 18 May 2005.[note: 103] Sapiahtun said he was normal.[note: 104]

83 Ismil's position was again that the answers for questions 16 to 30 were given by him because he felt compelled to do so. Answer 31 was because he had agreed to a suggestion made by the IO. As for Answer 32, Ismil's position was that he did not give the responses from the second sentence thereof beginning with "Upon hearing that…" to "This is because I had stabbed her accidentally". He had signed the statement nevertheless because he felt compelled to do so.[note: 105]

84 Ismil said he made this statement because of the Cantonment threat and Sapiahtun's inducement to have the charge reduced. He was simply agreeing to whatever the IO wanted as he was still suffering from withdrawal symptoms.[note: 106]

85 The IO disagreed that he had given any suggested response or that Ismil was compelled to sign the statement. He also asserted that what was recorded in Answer 32 represented Ismil's response.[note: 107] Sapiahtun's evidence was that there were no threats or inducements, no suggestions and Ismil was not compelled to agree to suggestions or to fabricate a story.[note: 108]

Ismil's signed statement to the IO on 19 May 2005 between 12pm and 1.15pm

86 On 19 May 2005, Ismil was brought to Block 185 to reconstruct the events leading to the death of the deceased.[note: 109] According to the IO, Ismil led the way from the lift landing on the ground floor of Block 185 to the deceased's flat. Ismil was cooperative and did not look frightened or complain of ill-treatment or of feeling unwell.[note: 110] What Ismil did and said during this reconstruction was recorded by the IO in his field diary between 12pm and 1.15pm with the interpretation done by

Sapiahtun. The IO, Sapiahtun and Ismil had signed on the hand-written record. The material part of the notes stated:

> 1200 Arrived at car park of Blk 185 Boon Lay Ave & I commence the investigation with the accused Ismil. Through the interpreter, I asked the accused to bring me to the flat where he said that he stabbed his female Chinese neighbour on 6/5/2005.
>
> The accused then led us to unit #05-156. Outside the unit #05-156, the accused pointed to the unit and said "This is the house".
>
> I used the keys to unlock the pad lock & wooden door.
>
> I then asked the accused to relate the event leading to the incident. Through the interpreter, the accused said.
>
> "When I was outside the flat, I knocked at the door. The door & the gate were closed. The Chinese lady opened the door but not the gate. I asked her to lend me money. She said no and raised her voice. I did not know whether the gate was locked. I opened the gate and walked into the house. I stood right in front of the door and asked her for money again. She raised her voice and said no. I got angry and went to the kitchen. I could not remember I took a knife or a parang. (The accused walked to the kitchen and pointed to a knife holder placed next to the washing basin). I pointed it at her and to scare her. I could not remember which part of the house I was standing when I pointed the knife or parang at her. The old woman held my wrist and there was a struggle. While struggling, she let go one of her hands and I stabbed her accidentally. I could not remember whether I ransacked the house. After stabbing her and before I left the house, I saw an old man lying on a bed in the bedroom facing the car park. At that time, I was in the hall. The old man was very sickly and he raised his head and shoulder. (The accused walked to the hall from the kitchen. He showed me where he stood when he saw the old man). The old man was lying on the bed near the window. (The accused pointed to the bed). Then, I left the house and went home.

87 Ismil said he made the statement because he was afraid of being assaulted and because of Sapiahtun's inducement. His condition was deteriorating because of his withdrawal symptoms.[note: 111] The other police officers who were with him at the deceased's flat looked very fierce and this caused him to be more afraid of being assaulted.[note: 112]

Ismil's signed statement to the IO on 19 May 2005 between 1.15pm and 1.25pm

88 From the deceased's flat, the party then went to #04-154 but did not gain entry into that flat. Another statement was recorded by the IO in his field diary with the interpretation of Sapiahtun outside #04-154 between 1.15pm and 1.25pm. The entry stated:

> Through the interpreter, I asked the accused to bring us to his house. The accused then led us to his house. Outside the accused's house #04-154 the accused said "I unlocked the gate pad lock and wooden door. I then entered the house. This is my another pair of slipper. (The accused pointed to a pair of slipper placed on the shoe rack outside the house).

The entry that day involving what Ismil had said was signed by Ismil, Sapiahtun and the IO.

89 After the visit to the deceased's flat and to #04-154 on 19 May 2005, Ismil was brought to BLSC the same day and led the party to the shop where he stole two handphones at #02-126. He told the IO he stole the handphones on 6 May 2005.

90 Sapiahtun said nothing unusual happened during the reconstruction of events on 19 May 2005 at Block 185.[note: 113] The IO and Sapiahtun disagreed that the oral statement made by Ismil on 19 May 2005 regarding what he did at the deceased's flat on 6 May 2005 was fabricated because of earlier threats made or inducements offered to him.[note: 114]

Ismil's signed statement to the IO on 20 May 2005 between 3.35pm and 4pm

91 On 20 May 2005, the party went again to #04-154 as they had not gained entry on 19 May 2005.[note: 115] However, the interpreter that day was Iskandar. At about 3.35pm, the IO asked Ismil what he had done when he returned home after stabbing the deceased. Ismil gave a response which was recorded in the IO's field diary (Exhibit P190) between 3.35pm and 4pm. The relevant entry was signed by Ismil, Iskandar and the IO. It stated:

> Arrived at Blk 185 Boon Lay Ave #04-154. The accused house.
>
> Through the interpreter, I asked the accused to tell me what he had done when he returned home after stabbing the deceased. The accused said.
>
> "When I entered the house, I went straight into the bedroom. (The accused went to the bedroom). I took out the T-shirt and shorts and hung behind the door. I changed another set of clothing, a T-shirt and bermuda. I then laid down on the bed in the bedroom. I was "high" then. 10 am plus nearly 11 am, my brother, Hathinin came into the house. I got up and went to the hall to meet Hathinin. I asked Hathinin whether he had "Dormicum" tablets. Hathinin replied that he did not have. I then asked Hathinin to go shopping at Boon Lay Shopping Centre. We then left home to Boon Lay Shopping Centre."

92 The IO said Ismil was cooperative.[note: 116] He disagreed that Ismil felt compelled to give his statement of 19 May 2005 as a result of past threats and inducements emanating from the following:

(a) SSI Lai and Inspector Wee on 7 May 2005 at about 5.55am.

(b) SIS officers on 7 May 2005 between about 11.30am to 12.40pm.

(c) Sapiahtun on 7 May 2005 at about 8.50pm.

(d) SSI Mazlan on 12 May 2005 at about 4.45pm.

93 The IO also disagreed that such threats and inducements operated in Ismil's mind throughout his remand at PCC.[note: 117]

94 Iskandar also said that as far as he knew, there was no threat made or inducement offered to Ismil prior to his statement of 20 May 2005. Although he had not asked Ismil if he had any complaints, there was in any event no complaint by Ismil.[note: 118]

95 Ismil said he made the statement on 20 May 2005 because of his past experiences, for example, the Cantonment threat, the allegation about his fingerprints and his not having been given any food during lunch time on 7 May 2005, his having to eat like an animal later that day when his hands were shackled and how he was feeling very cold when his cautioned statement was recorded and because of his withdrawal symptoms.[note: 119]

Ismil's signed statement to the IO on 24 May 2005 between 2.30pm and 4.30pm

96 A statement was recorded from Ismil on 24 May 2005 by the IO at room 6, PCC lock-up between 2.30pm and 4.30pm. Iskandar was also the interpreter on this occasion. The statement stated:

Q34: On 19 May 2005, when you were in the deceased's house for investigation, you mentioned that you could not remember whether you took a knife or a parang from the kitchen, can you differentiate between knife and parang?

A34: Knife is long and light. The handle is made of wood. Parang is broad and heavy. (recorder offered the accused some paper to draw a knife and parang but the accused claimed that he did not know how to draw)

Q35: Now, before you is a piece of paper with three diagrams, can you tell me what are they (recorder draws a parang, knife and a chopper and show it to the accused)?

A35: A is a parang. B is a knife. C is a parang. In my statement I mentioned "parang" which I meant is showed in diagram C that used to cut meat.

Q36: How many times did you stab the deceased?

A36: I could not remember.

Q37: How long did you remain in the deceased's house?

A37: About half an hour.

Q38: Did you see the deceased sitting on a plastic chair in the kitchen after you had stabbed her?

A38: I did not notice.

Q39: What did the deceased do after you had stabbed her?

A39: I did not know.

Q40: Did you close the main door when you left the deceased's house?

A40: I did not know.

Q41: Did you change your brief when you changed another set of clothing after you had stabbed the deceased?

A41: No, I did not. I still used the same brief when I was arrested.

Q42: Can you tell me what time did you return home on 5 May 2005?

A42: I could not remember as I was always *steam*.

Q43: Did you ever borrow money from your neighbour?

A43: No, that was my first time I tried to borrow money from my neighbour.

Q44: What language did the deceased speak to you?

A44: I spoke to her in Malay and she replied in Malay.

Q45: How much do you intent to borrow from the deceased?

A45: About S$20/-.

Q46: Why must you still need to borrow money from the deceased if you had S$21/-?

A46: Not enough to buy Dormicum?

Q47: How much do you need to buy Dormicum?

A47: About S$40/- plus.

Q48: How many Dormicum tablets do you need a day?

A48: About 10 tablets.

Q49: How much does it cost a tablet of "Dormicum"?

A49: S$3/- each.

Q50: Where and how did you get your money to buy your Dormicum tablets daily?

A50: I worked three or four times a week as general worker. When I want to work, I would go to Boon Lay Shopping Centre to for [sic] a male Malay "Man". I did not have his contact number and he would tell me whether there is job for that day. If there is job, he would ask me to go onto a lorry that would bring me to the work site to work. I do not work at a fix work site. My employer is a male Indian Muslim called Nasir. I did not have his contact number. I was paid daily which about S$40/- per day from 8.00am to 5.00pm.

97 The IO again said Ismil was cooperative and alert when he gave his responses.[note: 120] He disagreed that Ismil felt compelled to give such statements owing to the same earlier threats and inducements which had been raised in respect of Ismil's earlier statements.[note: 121]

98 Ismil said he provided a statement on 24 May 2005 for the same reasons as when he provided a statement on 20 May 2005. He also said he was not able to withstand mental pressure exerted by police officers and his condition was aggravated by his withdrawal symptoms.[note: 122] He was still fearful of being assaulted.[note: 123]

27 May 2005 to 2 June 2005

99 On 27 May 2005, an order was made for Ismil to be sent for a psychiatric assessment. He was brought to Changi Prison Hospital which has since shifted to Changi Complex Medical Centre. He was seen by Staff Nurse Herbert Phoon ("S/N Phoon") on admission. S/N Phoon's notes stated:

> Referred from court. Ambulatory and condition fair. Rational and coherent. Not disturbed. Medical history – Nil. Psychiatric history – nil. Drug taking since 1989 till now on drug ingestion and injection. Understand charge against him was murder. Appeared stressed. Claimed hearing voices. Sometimes want to bang head when stressed but claimed not to hurt himself. Denied suicidal intention. Admitted for observations.

100 S/N Phoon explained that Ismil's general condition was based on his vital signs like his blood pressure, pulse rate and respiration rate. S/N Phoon also noted that Ismil was rational and coherent, meaning Ismil was able to say his name, his I/C number and where he was at and the time and persons around him. Ismil was able to understand and answer questions. Ismil was also noted as not disturbed, meaning there was no abnormal behaviour like shouting or struggling.[note: 124]

101 S/N Phoon did not observe any tearing, running nose or trembling hands. Also, he was not told by Ismil that he was suffering withdrawal symptoms or had been ill-treated by the police. He said if Ismil had told him either of these things, he would have noted it down.[note: 125] He accepted that he was not paying particular attention as to whether Ismil was exhibiting signs of drug withdrawal.[note: 126]

102 Dr Mohd Emran Bin Mamat was the physician who examined Ismil on three days at Changi Prison Hospital, *ie*, 30 May, 1 June and 2 June 2005. His notes stated:

> 30.5.05
>
> Referred from court for psychiatric assessment. Felt pressure and stress >>> hearing voices

>>>> saying "gantung" Now unable to sleep. Wants oral medicines to take to sleep and wants ? extra bread. Now also has abdominal discomfort. Blood pressure 100/70. Abdomen soft. Not Guarded. Not Distended.

PLAN: 1) Refer Psychiatrist
2) Ranitidine 150mg BD X 1/7
3) Buscopan 1 tablet BD X 1/7

1.6.05

Abdomen discomfort
Rantidine 100mg [which should read as 150mg] BD X 3/7
Buscopan 1 tablet X 3/7

2.6.05

Compliant of Bodyache and athralgia.

Claimed has reduced appetite>>> request extra bread and milk. Claimed stress thinking about the case. Body pressure 100/70. Temperature 36.8. Pulse rate 62 per minutes. Weight 54kgs. Blood taken for VDRL Right femoral.

PLAN: 1) Extra 2 pieces of bread at night
2) Panadol 1 gm TDS X 2/7 (for body ache and pain)

103 Dr Emran explained that "gantung" is a Malay word meaning "hanging". On 30 May 2005, he found Ismil to be alert, relevant and orientated[note: 127] although Ismil complained he was unable to sleep. Ismil had complained of abdominal discomfort but Dr Emran's examination found the stomach to be soft, not guarded and not distended. This suggested the abdomen to be normal. There was no complaint of nausea or vomiting. Rantidine and Buscopan were prescribed. The former was a gastric medication and the latter a pain reliever.[note: 128]

104 On 1 June 2005, Ismil was still complaining of abdomen discomfort.

105 On 2 June 2005, Ismil complained of body ache and athralgia meaning joint ache. Ismil had a reduced appetite but requested extra bread and milk presumably for his gastric discomfort.[note: 129] Dr Emran said Ismil claimed he was having stress thinking about his case and that was the cause of reduced appetite and the aches. The vital signs were within the normal range.[note: 130]

106 As the aches were vague symptoms and very subjective and Ismil had attributed his symptoms to stress from the case, Dr Emran did not suspect that Ismil might be suffering withdrawal symptoms.[note: 131] However, even if Ismil was suffering from withdrawal symptoms then, Dr Emran would consider them to be mild as severe withdrawal would present more severe symptoms like severe tremors and abdominal pain and the vital signs would be affected although he was not familiar with Dormicum withdrawal.[note: 132] Ismil was alert and clear in speech based on daily notes made by a nurse.[note: 133]

Ismil's signed statement to ASP Bakar on 3 June 2005 between 6.15pm and 7.15pm

107 On 3 June 2005, Ismil was brought to the Subordinate Courts where an amended murder charge

was read to him which mentioned the involvement of Muhammad. He said that when he found out Muhammad was also the subject of the charge, he was shocked, confused and his stress level increased.[note: 134] From the Subordinate Courts, Ismil was brought to PCC where he gave another statement at an interview room in the office of SIS between 6.15pm and 7.15pm. The recording officer was ASP Bakar and Ismil spoke to him in Malay. SSI Mazlan was also present initially at 4.45pm but was asked by ASP Bakar to leave. The material part of the statement stated:

> I wish to reveal that before I went to the flat of the Chinese lady on the 5th floor on 6 May 2005, I was with my younger brother Muhammad and our friend, Hashim.
>
> 2 When I woke in the morning between 8.00am and 8.30am, I consumed 6 Dormicum sleeping tablets orally in the bedroom and thereafter, I woke up my younger brother, Muhammad who was then sleeping in the same bedroom. When he had woken up, I went to the kitchen and consumed a glass of warm water. I then took a glass of hot water from the kettle and returned to the same bedroom. Inside the bedroom, I smashed two Dormicum sleeping tablets inside a plastic till it became powderish. Thereafter, I took some hot water to dissolver the powderish Dormicum and used a syringe to inject the solution into my left neck. Muhammad who was still inside the room did the same with his own syringe. Thereafter, we relaxed for a while.
>
> 3 A while later, Hashim came to the house. …While we were together, I suggested to my brother, Muhammad to rob the Chinese lady staying on the 5th floor beside the staircase to get money for our daily expenses. I suggested robbing the 5th floor lady because I knew that she was always alone. Muhammad agreed. During our discussion, Hashim was in our bedroom and I did not pay attention whether he had heard our conversation.
>
> 4 Hashim, Muhammad and I left the house soon after Muhammad agreed to my suggestion. Muhammad and I walked up the staircase to the 5th floor. When we arrived, I knocked on the door of the house. An old Chinese lady opened the door and grille gate, I rushed into the flat and confronted the old Chinese lady. I also asked Muhammad to start ransacking for money. The old Chinese lady was making a lot of noise and I asked her to keep quite [*sic*] but she refused. I went to the kitchen and took a knife with my right hand. My intention was to threaten her to keep quite [*sic*]. She continued to shout and grabbed my right hand. We ended up struggling and I fell on the floor. The lady also fell onto me and the knife accidentally stabbed her. I could not remember which part of the flat where the struggle had taken place. I quickly stood up and asked Muhammad to leave the house immediately. While I was leaving the house, I noticed an old and sickly man lying on the bed inside bedroom facing the carpark.
>
> 5 Muhammad and I returned home. I changed my clothing. Muhammad gave me some money which he had taken from the house. I could not remember the amount.
>
> 6 At that time, I did not know where Hashim was. I could only remembered that he left our flat with us. I did not know whether he had followed us to the flat of the old Chinese lady. I only remembered that Muhammad and I entered the flat of the old Chinese lady.

108 ASP Bakar said that initially Ismil was questioned about Muhammad's involvement in the deceased's murder.[note: 135] Ismil was not forthcoming but eventually he mentioned the involvement of his brother Muhammad. This was at about 5 to 5.15pm and ASP Bakar then told SSI Mazlan to leave the room. ASP Bakar denied that SSI Mazlan and he had compelled Ismil to give the statement of 3 June 2005 or that Ismil was labouring under a threat that if he did not provide such a statement, he would be assaulted by SIS officers or that SSI Mazlan had told Ismil that Muhammad had

implicated him (Ismil) and Ismil should provide a statement to save himself. ASP Bakar also disagreed that Ismil's statement was based on suggestions and on a chronology provided by ASP Bakar because Ismil was afraid of being assaulted[note: 136].

109 The evidence of SSI Mazlan was that Ismil was told during the interview on 3 June 2005 that Muhammad had revealed that he (Muhammad) was present at the scene of the crime and Ismil was asked what he had to say[note: 137]. Ismil was quiet and not forthcoming initially for about 20 to 25 minutes before he mentioned Muhammad's involvement at the deceased's flat.[note: 138] There was no denial as such about Muhammad's involvement.[note: 139] SSI Mazlan denied he had exerted pressure on Ismil or that he had told Ismil to do something to save Muhammad.[note: 140] He also denied that Ismil had given a statement to ASP Bakar as a result of pressure or inducement from him (SSI Mazlan).

110 Ismil's evidence was that SSI Mazlan was pressurising him to save his younger brother and was aggressive. SSI Mazlan had a fierce face and was moving his hands about. SSI Mazlan also told Ismil what Muhammad had said and suggested that Ismil should adopt that too. Ismil said he had to agree or he would be in more trouble. He was feeling sick and cold and his mind was becoming more muddled. He felt pressured ever since his arrest on 6 May 2005.[note: 141] He was wondering why Muhammad would involve him when he (Ismil) was not involved at all.[note: 142]

Ismil's signed statement to the IO on 9 June 2005 between 10.30am and 12.55pm and 4.10pm and 6.25pm

111 The IO recorded another statement from Ismil with Sapiahtun as interpreter at room 6 and 7, PCC lock-up between 10.30am and 12.55pm and between 4.10pm and 6.25pm. This was on 9 June 2005. The material part of the statement stated:

> Before the recording of the statement, the interpreter read over my previous statements dated on 11 May 2005, 17 May 2005, 18 May 2005, 19 May 2005, 20 May 2005 and 24 May 2005 to me in Malay. After my previous statements were read over to me, through the interpreter, I told SI Raymond Tan that I wanted to make some amendments to my statements.
>
> 16 The last time I went to the Sub Court, the female Court interpreter read over my charge to me in Malay. The charge stated that my younger brother, MAMAT (Muhammad Bin Kadar) and I have committed the murder together. I then knew that the police had known that MAMAT was also involved in this case.
>
> 17 I wish to say that on 6 May 2005 at about 8.30am, I woke up and MAMAT was still sleeping in the bedroom…
>
> 18 After *jabbing* the Dormicum, we rested in our bedroom. I knew that I had only S$21/- with me and I did not have enough money for our daily needs. I then suggested to "MAMAT" that we go and rob the above house. I did not tell MAMAT which unit I was referring to. I want to say that I have observed the above house for about one week before this incident. I believed that there was no one in the house as the door was closed 24 hours everyday. Every time, I went to observe the house, I noticed that the door and gate were closed. MAMAT agreed.
>
> 19 On the same day at about 10.00am, MAMAT and I left our house. I could not remember the attires and footwear that MAMAT and I were wearing. I left my house first and followed by

MAMAT. We turned right and walked up the staircase. I was always walking infront of MAMAT.

20 When we reached the fifth floor and we stood outside the unit next to the staircase. I had led the police to the unit where I had stabbed the Chinese woman neighbour. The gate and the door were closed. I then knocked on the door and MAMAT was standing behind me. Shortly, the Chinese woman opened the door. Once she opened the door, I opened the gate and I *rushed* into her house. At that moment, I did not *expect* somebody to open the door but we *continued* with our *plan* to rob. Once, I entered the house and was at the *hall*, I asked the Chinese woman to keep quiet in Malay. MAMAT was then outside the house and I asked him to go *into* the house and to *ransack* the house. MAMAT came into the house and thereafter I did not know where he had *ransacked* the house. I did not know whether I had closed the door. The Chinese woman and I were still at the *hall*. I could not remember which part of the hall we were in then. The Chinese woman kept talking in Chinese which I did not understand. She was talking in a scared voice. I kept asking her to keep quiet in Malay but she continued talking.

21 I got *fed-up* and went into the kitchen to take a knife and the Chinese woman was still in the *hall*. I wanted to scare her with the knife so that she would keep quiet. I have no intention to kill her. I then returned to the Chinese woman in the *hall* and showed her the knife. I pointed the knife at her and told her to keep quiet in Malay. She was afraid when she saw the knife that I was holding in my right hand. Suddenly, she *grabbed* my right wrist with her hands and there was a *struggle*. Suddenly, my left leg knocked onto something in the *hall* and I fell backward onto the floor. The Chinese woman was still holding onto my right wrist when I fell onto the floor. She fell forward and her body landed on top of my right shoulder. At that moment, I was still holding that the knife and I stabbed her accidentally. I did not know where I had stabbed her. I then pushed her away and I got up. I did not know where the knife was when I stood up. I was scared of what had happened to the Chinese woman and I called out MAMAT's name and asked him to leave the house. At that moment, I did not know where MAMAT was. I did not know where MAMAT came out from and we left the house together. Before, I left the house, I saw the Chinese woman's sickly husband lying on a bed in the bedroom facing the car park. MAMAT left the house first and I followed behind. I could not remember whether I had closed door and gate when we left the Chinese woman's house.

22 MAMAT and I then walked down the staircase and returned to our house. I did not know whether MAMAT or I opened our house door. When I returned home, I changed to another set of clothing which I had mentioned in my previous statement. I hung the old set clothing behind our bedroom door.

23 These are the changes that I would like to make in my statement. The rest of the events after I had stabbed the Chinese woman would be the same as mentioned in my previous statements…

Stopped at 12.55pm for lunch

Continue the recording of statement on 9 Jun 2005 at about 4.10 pm at interview room 7. The accused has no objection for Sapiahtun Mohd Ali to act as interpreter.

The following questions were posed to me.

Q51: You mentioned earlier that you have observed the deceased's house for about one week before the incident. How did you observe?

A51: Whenever I went to SANI's house at 9th floor, I would walk up the staircase and would pass by the Chinese woman's house. I noticed that the door and gate were always closed. I did not pay attention whether the gate was padlocked. I also noticed that the corridor was quiet. I did not stand outside the house to observe and I also did not peep into the house through the window to observe. The house is located at a corner unlike the other units that are located in a row.

Q52: When was the last time you observed the deceased's house prior to the incident?

A52: I think it was 4th or 5th of May 2005.

Q53: How many times did you observe the deceased's house?

A53: 3 or 4 times.

Q54: You mentioned that you suggested to MAMAT to rob the house. What do you mean the word "**rob the house**"?

A54: I mean *housebreaking*.

Q55: During the week of your observation at deceased's house, did you ever suggest and discuss with MAMAT to do housebreaking at the deceased's house?

A55: I did the observation alone. MAMAT did not know that I was planning to do housebreaking at the deceased's house. He only got to know the plan and agreed to it before we went to the deceased's house on 6 May 2005.

Q56: Did you or MAMAT bring any instrument to the deceased's house?

A56: I could not remember and I did not know.

Q57: Why did you have to knock at the deceased's door if you would [*sic*] to do housebreaking?

A57: I want to check whether anybody is there.

Q58: In your answer to Q10, you mentioned you knocked at the deceased's door was to borrow money from the deceased. Can you explain why your answer to Q57 was different from Q10?

A58: Our intention was not to borrow money but to do *housebreaking*.

Q59: When mentioned that you struggled with the deceased in the house, where was MAMAT then?

A59: He was inside the house but I did not know in which part of the house he was.

Q60: Were you still wearing your footwear when you rushed into the deceased's house?

A60: I could not remember that.

Q61: How many injuries did the deceased sustain?

A61: I could not remember.

Q62: Could she had sustained more than one injury caused by the knife that you were holding?

A62: I cannot answer this question. I cannot remember. I do not know.

Q63: Can you describe the position of the deceased when she fell forward?

A63: She was facing me when she fell forward.

Q64: Which part of the house, when you and the deceased fell?

A64: In the *hall*.

Q65: Was MAMAT wearing his footwear when he went into the deceased's house?

A65: I did not know.

Q66: Did MAMAT take anything from the deceased house when both of you left her house?

A66: When we returned home from the deceased's house, MAMAT took out S$60/- and threw them on the floor in the bedroom. He did not tell me whether the money was taken from the deceased's house. I also did not know where he took the money from. I did not ask him how he got the money. I did not take the money and MAMAT took it back. I then told MAMAT to use the money to buy "Subutex". At 4.00pm, we left SANI's house, HAT and MAMAT went Clementi to buy "Subutex". I did not follow them. HAT and MAMAT had mentioned that they wanted to go and buy "Subutex" when we were at SANI's house.

…

Q70: When you suggested to MAMAT to do housebreaking at the deceased's house, how much money did he had?

A70: I did not know. I did not ask him and he did not tell me.

Q71: Prior to this incident did MAMAT ever borrow money from you?

A71: No. He did not.

Q72: Prior to this incident, did you borrow money from your family members?

A72: No, I did not.

Stopped at 5.50pm

[emphasis in original]

112 According to the IO, Ismil said during the interview in the afternoon that he was "fed up" because the IO was asking too many questions. This was corroborated by Sapiahtun[note: 143] who also said Ismil looked unhappy at this point of time.[note: 144]

113 The IO disagreed that Ismil provided this statement or the earlier statements because of earlier threats and inducements from SIS officers and SSI Mazlan's threats and inducements of 3 June 2005.[note: 145] The IO also disagreed that during his recording of Ismil's various statements, he had looked fierce and his (the IO's) face would turn red on occasions.[note: 146]

114 Sapiahtun disagreed that the IO had made suggestions to Ismil when his statement of 9 June 2005 was being recorded.[note: 147]

115 Ismil agreed that he had said he was fed up during the recording of this statement. When he said he was fed up, the attitude of the IO and the interpreter did not change in that they were still fierce.[note: 148] He said he simply followed what was suggested to him and the pressure and threats including the Cantonment threat and Sapiahtun's inducement still caused him to give this statement.[note: 149] He gave this statement also to save his brother and to cooperate with the police.[note: 150] However, he did not ask what was happening to Muhammad's case as he was too sick to think.[note: 151]

Evidence of Dr Winslow

116 The prosecution also called Dr Munidasa Winslow as a witness in the *voir dire* for Ismil's statements to give expert evidence on the relevance of withdrawal symptoms from Dormicum and Subutex. Dr Winslow interviewed Ismil about a year later after his arrest on three occasions, *ie*, 26 April, 4 and 8 May 2006. The material part of his amended report dated 9 May 2006 stated:

> 7 His account of his withdrawal symptoms was mainly a feeling of weakness with bone aches, and feeling cold. He did report telling the interrogators that he was a drug addict, but there is no documented account of him asking for additional medical attention or medicines for withdrawal. In addition there were minimal symptoms of drug withdrawal like nausea. He did not have any vomiting, tremors, running nose or documented diarrhoea.
>
> 8 He was able to give a clear and consistent account of events that led from the last use of dormicum on the afternoon of the 6th May 2005 till he completed his statements on the 7th May 2005. He was also able to give an account of where and approximately when the statements

were taken. Asked about details of the statements and why he gave them, he was only able to state that he was scared. I also queried as to why his account to the examining forensic psychiatrist in the middle of June 2005 was consistent with accounts in his earlier statements to the police. He was only able to state that this was because he knew that the CID or police would read the doctors' report, so he gave the same account.

9 I have also noted that the examining doctor at Alexandra, Dr. Cheong Hong Fai, did not note any significant withdrawal symptoms from either benzodiazepine or opoid drugs. The recorded vital signs (i.e. pulse, blood pressure and respiration) of the accused were also normal and the pain scale was recorded as "0" or zero by the attending nurse. The toxicology also did not show the presence of any subutex or dormicum in his blood.

10 In my opinion, the first accused, Ismil bin Kadar may have had mild physical withdrawal symptoms from dormicum and/or subutex during the recording of his statements. These are likely to have been bone aches and restlessness, however the symptoms were not significant enough to be noted by attending police or medical officer and not emphasized by himself until much later. I am of the opinion that the withdrawal from his drug use is unlikely to have had a significant effect on his ability to provide his statements.

117 Dr Winslow elaborated that Dormicum is a benzodiazepine hypnotic drug. It is a sleeping tablet with a half-life of between one and a half to two and a half hours. Half-life refers to the amount of time it takes for the body to remove half the substance from the body. Drug abusers would feel high or a period of euphoria and there would be some impairment to consciousness. There is a rapid development of tolerance to the drug.[note: 152] The main symptoms for withdrawal of Dormicum would be anxiety, nausea, tremors and in more severe cases, seizures or fits or paranoid delusions.[note: 153] Withdrawal symptoms would vary from person to person.[note: 154]

118 Dr Winslow's notes recorded Ismil as having told him that he was "high" till 6 May 2005. The "steam" was still there till 7 May 2005 and he could last till the morning of 8 May 2005 before withdrawal symptoms were felt.[note: 155] Ismil also told him he was experiencing "ngian", *ie*, a craving for the drugs, his bones were painful and his appetite was down because of withdrawal. His sleep was also affected after 8 May 2005.[note: 156]

119 In cross-examination, Dr Winslow elaborated that he spoke to Ismil in Malay although on the last occasion he had a Malay colleague with him to ensure that everything that was said was correct in the colloquial use of words.[note: 157] He agreed that Ismil had told him he had had diarrhoea two or three times on 7 May 2005 but there was no documentary evidence of this.[note: 158] He agreed that there would be some impairment to cognitive functioning of a person who consumed benzodiazepine on a long term basis.[note: 159] He agreed that confusion and delirium could occur when there is rapid withdrawal from high doses of benzodiazepine.[note: 160] A drug abuser would have some difficulty coping with stress after benzodiazepine cessation.[note: 161]

120 According to Dr Winslow, Ismil said he provided statements because he was scared and he had "ngian".[note: 162] Ismil did also say he was confused but did not elaborate.[note: 163] However the context in which Ismil said he was confused may be elucidated by Dr Winslow's case notes and evidence. I set them out below as well as Dr Winslow's evidence as regards Ismil's state of mind.

"Question: Why did you voluntarily sign statements if you did not do it?

Answer: I told them I didn't do it. I was scared of beating. I told them I didn't know anything. I bluffed them and told them what they wanted to hear.

Question: You have been in prison or DRC many times. You know that what you sign will be used in court. You know that it is a legal document. So why did you sign?"

There was silence.

The next question:

[Reads]

"Question: For example, if you used Erimin, would you sign a statement saying that if you didn't do it?"

Hereafter some silence. He said:

[Reads]

"Answer: I signed because the interpreter said, 'If you don't sign, the court will take action against you'. I give you an example. They said, 'If you sign, then you will get a lighter sentence'."

The first statement are conferment by Sapationg---Saptiong.

Q: Tun, Sapiahtun.

A: Sap---sorry, Saptiong---Saptun.

Court: Sapiahtun.

Witness: Sapiahtun, sorry.

A: Same---same answer:

[Reads]

"Answer: They also said if you don't sign, the court will take action. If you sign, *mungkin*" ---which means "perhaps"---"the charges can be reduced."

[Reads]

"Question: But you know that if you sign, it is a legal document?

Answer: Yes, but I was confused."

So that is the context in which the "I was confused" was used in.

Q: Okay. How did you then determine whether he was indeed in a state of confusion following his arrest?

A: It is the overall impression from the history-taking that I have. I have no doubt that he would have been in a state of anxiety for two reasons.

Q: Okay.

A: One is that I assumed that he would have some withdrawal symptoms because he had been a regular drug user and the second is, anybody being told that they are facing a murder charge, even if they are simple, should have some anxiety and apprehension.

Q: But since confusion is a symptom that is specific to benzodiazepine withdrawal, were you able to rule that out now, a year after whatever happened?

A: If you are asking for absolutes, no. It is on probabilities that if a person is able to give an account of events around that period and able to give you a pretty consistent history of what happened, then the amount of confusion that they were feeling most probably limit it.

Q: So that is the only basis for you to say that---

A: Yes.

Q: ---that he was able to recollect what happened?

A: It is again the overall picture, right. It is the recollection, the history-taking, the lack of noticeable physical symptoms from both the police officers and the doctors who examined him at that time.

Q: But you cannot rule it out, correct?

A: I cannot rule it out hundred per cent.

121 Dr Winslow also said sore eyes and running nose were not the symptoms he would usually associate with benzodiazepine withdrawal but if withdrawal symptoms or anxiety was strong enough, it would have been noticed by people looking at the person. Also, physical withdrawal symptoms would tend to go hand in hand with psychological withdrawal symptoms.[note: 164]

122 In re-examination, Dr Winslow said that for a short-acting benzodiazepine like Dormicum, the peak time when the most severe effects would be within 48 hours of cessation of the drug.[note: 165] He added, at NE 718 and 719:

A: If I may help the Court. I mean, one of the things that has bothered me and I think wonder also is, why is it that the withdrawal symptoms were apparently so little if he is a severe addict or severe user, benzodiazepine-dependent patient. And we have seen such things where there are very few actual physical symptoms and this is because it is something that we do ourselves when helping to detox patients, we try and distract them. So in the ward, for example, when somebody is withdrawing from benzodiazepine or hypnotics, you will get them to do art therapy or participate in groups. In non-medical settings, usually what happens is that they get the person to chant or to pray or to do activities. In this case my own feeling is that he did not experience so much physical symptoms and symptoms of withdrawal because he was actually---had a heightened adrenalin rush from the sheer effect of being arrested and charged. That is my own reasoning on why the symptoms are probably less than I would have anticipated. Having said that, I would say that my report is at least 95% accurate in terms of assessing the severity of his withdrawal symptoms and his ability to understand his cognitions at that time---his cognitive state at that time.

123 As for confusional psychoses as an illustration of a strong withdrawal reaction mentioned in Olaf H. Drummer, *The Forensic Pharmacology of Drugs of Abuse* (Hodder Arnold, 2001) (Exhibit P286), Dr Winslow said the confusion there was a reference to confusion bordering on a delirious kind of activity. He also did not find Ismil to be so anxious as not to be in touch with reality.[note: 166]

124 Ismil said that at times he did not understand Dr Winslow when he was interviewing him. He said that when he gave the response that the steam was still there till 7 May 2005, this was untrue as he did not understand Dr Winslow.[note: 167] He had also lied about being able to last till 8 May 2005. He had not sought clarification when Dr Winslow's Malay colleague was around because the Malay colleague looked fierce.[note: 168] Ismil said he was under medication when Dr Winslow interviewed him and his mind was not consistent.[note: 169] He could not remember whether Dr Winslow had asked him about his movements from 7 May 2005 and he said he was not able to respond to such a question.[note: 170] He said he did not tell Dr Winslow or his Malay colleague that he was not in the right frame of mind to be interviewed.[note: 171].

125 As a result of Ismil's disclosure that he was on medication when interviewed by Dr Winslow, Dr Winslow was re-called to give evidence on the mental state of Ismil when he was interviewing Ismil. By then, Dr Winslow had learned from prison records that Ismil had been prescribed Prothiaden, an anti-depressant drug and Valium. However, notwithstanding this knowledge, Dr Winslow did not consider it necessary to interview Ismil again.[note: 172]

126 When Ismil was cross-examined again, he said the events of 6 to 8 May 2005 were still clear to him.[note: 173] He said he was feeling mentally weak when he was arrested but he omitted to inform Dr Winslow about this as he was on medication.[note: 174] He also said he omitted to mention that he had running nose, diarrhoea, shivering, he could not sleep properly and had pain all over his bones and joints[note: 175] although, according to Dr Winslow, diarrhoea was mentioned. Ismil said that his omission was not due to the medication he had been taking but because he was mentally slow and he was then depressed.[note: 176] He also said he should have told Dr Winslow he had vomited on 7 or 8 May 2005.[note: 177]

The Court's Decision on the *Voir Dire* for Ismil

127 Based on the principles I have referred to ([9] to [26] above), I accepted the submissions of the prosecution and counsel for Ismil that the circumstances in which Ismil allegedly came to give his oral statement or statements to SSI Zainal on 7 May 2005 should be part of the *voir dire* even though Ismil's position was not that he had said what was attributed to him involuntarily but that he had not said it at all.

128 I will first deal with the issue of Ismil's withdrawal symptoms. His counsel argued that I should not rely on the evidence of the various CID officers who had observed Ismil's demeanour or the evidence of Dr Cheong who had examined Ismil before and after his cautioned statement was given. Presumably this submission included the evidence of interpreters and those at Changi Prison Hospital who had also observed his demeanour. The submission was that it was fallacious to accept such evidence as none of these persons was trained to observe or assess withdrawal symptoms, unlike Dr Winslow. Furthermore these witnesses had limited experience with those who abused Dormicum.

129 I was of the view that such an argument was itself fallacious. Although these witnesses were not trained specifically to assess withdrawal symptoms and had limited experience with abusers of Dormicum, they had powers of observation which could not be rejected outright. The weight to be attached to their evidence was another matter.

130 I will now summarise the evidence of various persons who had come into contact with Ismil when his various statements were given.

131 In the early hours of 7 May 2005 at about 5.55am, Inspector Wee had observed Ismil to be restless, tired with bloodshot eyes and a little slurred in his speech. This was at Jurong Police Division Headquarters. Indeed, ASP Bakar said that at a briefing at 9am of 7 May 2005, Inspector Wee said Ismil appeared "high". On the other hand, Mr Tiu said Ismil appeared tired that morning and he did not observe more than that.

132 Later, at about 11.10am at the car park of Block 185, SSI Zainal observed Ismil shaking his two legs while he questioned him in a car at the car park of Block 185. Otherwise, Ismil was alert and able to respond to questions.

133 Thereafter, at JWNPC, SSI Zainal questioned Ismil further and according to him, Ismil provided more information. There was no evidence from SSI Zainal suggesting that he had then observed anything unusual about Ismil's demeanour.

134 The same applied to ASP Bakar's evidence when he recorded a statement from Ismil at about 12.40pm at a VSC office at JWNPC.

135 The evidence of Dr Cheong for the pre-statement medical examination was that Ismil did complain about being unwell for three days. Ismil mentioned he was nauseous but had no other complaints. Ismil was very alert and comfortable and fit for police questioning.

136 As regards the night of 7 May 2005 when Ismil's cautioned statement was recorded, Sapiahtun accepted that Ismil had told her he was cold before his cautioned statement was taken. After she opened the door of the room they were in, there was no further complaint. She did not notice him shivering.

137 Dr Cheong's evidence for the post-statement medical examination was that Ismil complained of

pain in his buttock from having sat too long and pain in his leg because of the presence of cuffs.

138 On subsequent occasions, nothing unusual about Ismil's demeanour was observed by the recorders or the interpreters.

139 The evidence from S/N Phoon and Dr Emran from Changi Prison Hospital about Ismil, who was admitted on 27 May 2005, also did not disclose any significant withdrawal symptom affecting his mental capacity. His vital signs were normal.

140 I do not propose to repeat the evidence of Dr Winslow. Although he was working under a disadvantage because he examined Ismil almost a year later in 2006, his evidence was still of some assistance to me.

141 On the other hand, Ismil's evidence was that from 7 May 2005, he was not only feeling nauseous but very cold and weak and confused. He had body and bone aches and diarrhoea even on 7 May 2005 although this was not disclosed to Dr Cheong. He also had diarrhoea on 8 May 2005. His condition was deteriorating until the time he was admitted to Changi Prison Hospital on 27 May 2005 when he began to feel better.

142 I should mention at this stage an argument raised by counsel for Ismil. Counsel relied on p 342 of *The Forensic Pharmacology of Drugs of Abuse* ([123] *supra*) which states:

> The question of whether addicted or drug-affected detainees can be rendered fit for interview by means of drug treatment by forensic medical personnel remains an extremely controversial one. It is certainly possible to reverse intoxication caused by benzodiazepines and opioids by means of the appropriate agent (see individual drug sections). It is also possible to treat withdrawal syndromes due to various drug groups in a manner that greatly increases the comfort of the patient. In general, such treatment should strictly be regarded as symptomatic relief or emergency treatment of a dangerous condition. There is no guarantee that the mental state of the patient after treatment will be at an adequate level to deal with the rigours of an interview that may lead to charges being laid. There are also ethical considerations binding most medical professionals, which makes this a questionable practice in most western societies.

143 I did not think this passage was relevant to the circumstances before me. It applies to a situation where the drug abuser is not fit for interview and an attempt is made to render him fit by some form of treatment.

144 On the whole, I accepted that from 7 May 2005, Ismil was suffering from withdrawal symptoms but the issue was whether they had so affected him that the various statements should not be admitted in evidence. I was of the view that his withdrawal symptoms were mild to, at most, moderate. They were worst in the early morning of 7 May 2005 when Inspector Wee observed him and thereafter his condition improved instead of deteriorating as alleged. Indeed, in para 14 of his statement of 17 May 2005 ([77] *supra*), he said he was slightly more sober (when SSI Zainal interviewed him at the carpark) than the time when SSI Lai and Inspector Wee had interviewed him. Yet, in the early morning of 7 May 2005, Ismil was alert enough to deny any involvement in the murder of the deceased. Ismil's overall evidence vacillated between his being confused or weak on the one hand, and on the other hand, his being alert enough to understand and remember alleged inducements and the statements he was making and what was said to him. I did not accept that he was too weak or frightened to tell Dr Cheong or anyone else more if he had significant complaints about his well-being. He was able to tell Dr Cheong about being nauseous and the pain in his buttocks and leg. He said he did not have a cold but I accept that he did feel cold. I was also prepared to

accept that he had some ache in his bones and joints. However, in my view, Ismil had exaggerated the rest of his withdrawal symptoms during the *voir dire* for obvious reasons and I concluded that they did not affect the voluntariness of the statements he gave.

145 Accordingly, I did not accept that his statements were given when he was confused and/or his will was sapped because he was experiencing severe withdrawal symptoms.

146 I come now to the allegations of threats, inducements and oppressive circumstances.

147 Insofar as threats are concerned, I will not deal with those "threats" which, on an objective basis, clearly could not be considered as threats for the issue of admissibility. For example, the allegation that Ismil considered ASP Bakar's warning not to talk to family members during the 7 May 2005 visit to #04-154 to be a threat does not make that warning a threat which would render any statement inadmissible.

148 As regards the Cantonment threat, I concluded that that threat was never made. As I mentioned, Ismil's evidence on this vacillated between not knowing what "Cantonment" referred to and knowing that it referred to a police station (see [37] above). Secondly, there was no reason to threaten him in the early hours at Jurong Police Division Headquarters just because he had denied involvement in Mdm Tham's murder. I rejected any suggestion that he was being made the fall guy by CID officers to take the responsibility for the murder. Thirdly, as the prosecution submitted, there was no evidence that CID was at that time thinking of bringing Ismil back to PCC for further investigation into the murder.

149 I also did not accept Ismil's evidence that he continued to labour under the Cantonment threat until the last of the statements in issue was recorded. He had not made any confession even when the threat was purportedly uttered. Also, he subsequently cooperated with CID and there was no reason for him to fear being assaulted . Indeed, the fact that he told the IO on 9 June 2005 that he was fed up with so many questions (see [115] above) militated against the suggestion that he was all along afraid of being assaulted.

150 As for Ismil's evidence that one of the two CID officers had said (in the early morning of 7 May 2005) that he would slap Ismil's face if his DNA was found (see [36] above), this allegation was made only when Ismil was giving his evidence. It was never put to either SSI Lai or Inspector Wee. I concluded that Ismil had fabricated this allegation just as he had fabricated the allegation about the Cantonment threat.

151 I come now to what transpired between SSI Zainal and Ismil at the car park of Block 185 (see [40]-[43] above). SSI Zainal's evidence was that he had asked Ismil what if his fingerprint was found in the deceased's flat and in response, Ismil admitted to stabbing an old female chinese. Ismil's evidence was that SSI Zainal had said that his fingerprints were found in the deceased's flat. SSI Zainal knew that at that time there was no clear evidence of anyone's fingerprint having been lifted from within the deceased's flat. If Ismil had never been inside and SSI Zainal nevertheless said that his fingerprints were found therein, Ismil would have known that SSI Zainal was saying something untrue. I concluded that SSI Zainal would not have been so foolish to say something without any evidence to back him up and he had asked what if Ismil's fingerprint was found to see how Ismil would respond. I also concluded that such a question did not objectively constitute a threat or inducement which would render any response thereto inadmissible. Not every testing or probing question constitutes such a threat or inducement, otherwise investigations will be unduly hampered.

152 Even if SSI Zainal had told Ismil that his fingerprint had been found inside the deceased's flat,

that would not necessarily render Ismil's response inadmissible. Sections 24, 28 and 29(a) of the Evidence Act states:

> 24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.
>
> 28. If a confession referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.
>
> 29. If such a confession is otherwise relevant, it does not become irrelevant merely because –
>
> (a) it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk;
>
> (b) it was made in answer to questions which he need not have answered, whatever may have been the form of those questions; or
>
> (c) he was not warned that he was not bound to make the confession and that evidence of it might be given against him.

153 In view of the proximity of s 28 and the use of the phrase "such a confession" in s 29(a), it is possible to construe s 29(a) to apply only if the confession was initially procured by an inducement, promise or threat and the inducement, promise or threat is then removed but the deception remains. However, *Sarkar's Law of Evidence* (Wadhwa and Co, 16th Ed, 2007) ("*Sarkar*") does not suggest such a limited interpretation. On the Indian equivalent of s 29(a), *Sarkar* states at pp 660 and 661:

> **Principle and Scope. [Confession Induced by Trick or Fraud]**. – It has been seen that a confession caused by any inducement, threat or promise *relating to the charge* and proceeding from a person in authority (s 24) or a confession to the police (s 25) or when in police custody to any person other than a magistrate (s 26), is inadmissible. If the confession is otherwise, ie if it is not obtained by any inducement, threat, or promise having reference to the charge against the accused person proceeding from a person in authority, or if the confession is not tainted with any other cause making it invalid or untrustworthy it does not become irrelevant merely because it was made under –
>
> (1) *a promise of secrecy*, or
>
> (2) in consequence of a *deception* or artifice practised on the accused, or
>
> (3) when he was *drunk*, or
>
> (4) because it was elicited in answer to *questions*, or
>
> (5) because *no warning* was given that he was not bound to say anything and that whatever he might say might be used as evidence against him.
>
> It is well-established that any breach of confidence or of good faith, or the practice of any artifice does not exclude a confession. The five non-invalidating origins of a confession are not

> exhaustive. Confessions obtained under promise of secrecy, deception, drunkenness, &c though admissible may sometimes affect their weight. The inducement or threat which invalidates a confession operates on the mind of the accused and raises some hope of temporal benefit in connection with the charge, but a confession obtained by any sort of deception is not the result of any inducement although the means may be reprehensible. Deception may assume the form of false representation or any other fraud or trick *(see R v. Derrington; R v. Burley, post)*.

154 I was of the view that s 29(a) is not confined to a s 28 situation and it applies even if there was initially no inducement, threat or promise. Nevertheless, the question is still whether any confession from Ismil to an assertion, if made, that his fingerprints were found would be a response procured by inducement, promise or threat from which it would appear to him reasonable to suppose that by making the confession he would gain an advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

155 It will be recalled that Ismil denied making any confession in response. His evidence was that he said "If yes, yes; if not, not" or words to that effect (see [43] above). Nevertheless, I had to consider what if he did make a confession as alleged by SSI Zainal. Would that confession be admissible? Unfortunately, there was no submission by the defence on this point.

156 In my view, it would not have been reasonable for Ismil to suppose that by making the alleged confession he would gain an advantage or avoid any evil of a temporal nature. On the contrary, by making a confession he would be at a disadvantage and would have brought dire consequences upon himself unless there was something else like a promise of a reduced charge at the time SSI Zainal spoke to him. However, there was no hint that any such suggestion was made then. If he had made the confession because he thought that his fingerprints had been found in the deceased's flat and he was caught off-guard, that was a different matter altogether. Accordingly, I was of the view that even if SSI Zainal had told Ismil that his fingerprints had been found in the deceased's flat, that would not render any confession in response thereto inadmissible. *A fortiori*, if SSI Zainal had not said that but Ismil had wrongly understood SSI Zainal to have said that.

157 However, the defence raised another argument. As I have stated, SSI Zainal had said he had recorded what Ismil had told him in a police vehicle at the carpark at Block 185 on a piece of paper. This piece of paper was produced as Exhibit P152. What Ismil had purportedly told SSI Zainal later at JWNPC in the late morning of 7 May 2005 was not recorded anywhere until some time after lunch on the same day in SSI Zainal's field diary.

158 The defence relied on *Dahalan* ([19] *supra*) to submit that as there had been non-compliance with Order 7 of the Police General Orders ("PGO") by SSI Zainal, I should not admit the piece of paper or the material entries in the field book. I rejected this submissions for the reasons stated below.

159 In *Dahalan*, the accused and another person were arrested on 6 July 1994 at Karachi Restaurant in Changi Road as the result of a routine check by one Cpl B Rajandran and two others and brought to Geylang Police Station. The accused's face was pale and his gait was unsteady. Subsequently, Cpl Rajandran was told by the restaurant owner that a bag belonging to one of the two persons arrested was still at the restaurant. Cpl Rajandran retrieved the bag and examined the contents which he suspected to be heroin. Cpl Rajandran reported the arrest and the bag to Sgt Lai Thong Fock who relayed the information to ASP Lim Chei Yoo of CNB. Sgt Lai was told to interview the two persons first.

160 Sgt Lai interviewed the accused first from 2.15pm to 2.30pm the same day and the other arrested person immediately thereafter. At about 6.20pm just before leaving office, he noted what

the accused told him in his pocket book. The prosecution sought to adduce in evidence the conversation between the accused and Sgt Lai and the extract from the pocket book which the defence objected to and a *voir dire* was held to determine admissibility.

161 Sgt Lai said he interviewed the accused in English. He jotted down what the accused said in note form on a piece of paper. At about 6.20pm, he wrote out in his pocket book an expanded account of what he had noted on the paper and then destroyed the piece of paper. Sgt Lai said he was in the vicinity just prior to the interview and he did not take the trouble to go up to his office and take his pocket book. He was not expected to carry his pocket book with him and it was his practice to leave his pocket book in the drawer and make entries only when he was free.

162 The PGO at that time made it obligatory for police officers to keep pocket books with them at all times and provided for directions on how pocket books were to be maintained. Order 4 thereof provided that entries were to be "made in the pocket book whenever possible at the time of occurrence". Order 4 also allowed notes to be made on a piece of paper but such notes had to be copied into the pocket book as soon as possible and the original retained in case of need. Order 7 provided that occurrences recorded in pocket books were likely to become the subject of legal proceedings. They should be recorded in the fullest possible details including "actual words of relevant statements".

163 Sgt Lai said that except for looking tired, the accused did not appear to be suffering from drug withdrawal. He said that as the accused appeared normal, it did not occur to him that it would be preferable to send the accused for a medical examination of his drug condition prior to recording any statement from him. Cpl Rajandran said that when he went to the accused's cell that afternoon to fetch the accused for interview by Sgt Lai, he found the accused asleep. He had to wake the accused up. He confirmed that during the interview the accused looked sleepy.

164 The defence submitted that while there was no evidence of any inducement, threat or promise, the court should nevertheless exercise its discretion to refuse to admit the conversation between Sgt Lai and the accused as recorded in Sgt Lai's pocket book. The trial judge decided to defer his decision thereon until the end of the prosecution's case.

165 At the close of the prosecution's case for the main trial, Dr Lim Yun Chin was called, apparently by the defence, to testify as an expert in the *voir dire*. Dr Lim was a consultant psychiatrist in private practice. He had been told that the accused started taking heroin intravenously from mid 1993 and that by March 1994, he was taking six to seven straws of heroin per day and was also adding erimin to the heroin before injection and taking erimin orally. He examined the accused in court. Dr Lim said that erimin was a potent hypnotic drug and was indicated for persons suffering from insomnia. Erimin in excess of the usual dosage of one tablet per night could cause amnesia. It would also induce excessive drowsiness and clouding of consciousness. The patient's judgment would be impaired and he would have a degree of disorientation. When erimin and heroin are combined, the effects would not only be addictive but potentiating.

166 Dr Lim opined that the fact that the accused, in spite of facing so severe a charge, had fallen asleep and had to be awakened at 2pm to give a statement to Sgt Lai suggested that both his mental and physical states, at that stage, were totally under the influence of the drugs he had consumed. He also pointed out that when a person is awakened from sleep he would not become alert immediately. There is a lag period of drowsiness and this would be more severe for a person on drugs especially erimin where the drug activity was still going on. Dr Lim told the court that, given the accused's drug history, at the time the police awoke the accused in the lock-up, he would have been experiencing the full effects of the erimin. This would mean that at that time he would have been

excessively drowsy, his judgment and awareness would be impaired and he could suffer from memory loss.

167 Dr Lim's testimony on the effects of erimin, the effects of heroin and erimin combined and his testimony that erimin caused amnesia was unchallenged but the prosecution urged that the court reject Dr Lim's evidence that the accused was suffering from these effects as Dr Lim's evidence was merely hypothetical – he not having examined the accused at the relevant time.

168 The trial judge Rajendran J said at pp 800 and 801:

> On the totality of the evidence for the trial-within-a-trial, I accepted the accused's evidence that he was a drug addict and that on the morning of the 6th he had taken erimin orally and injected himself intravenously with a mixture of heroin and erimin. I accepted Dr Lim's evidence that if the accused had consumed the heroin and erimin as claimed he would suffer from disorientation, drowsiness and a clouding of consciousness which would have impaired his judgment. Although Dr Lim said that the severity of these effects at any particular point of time could vary and would lie on a continuum between normal alertness and being in a coma, I accepted his evidence that bearing in mind the accused's drug history, the time at which he injected himself with the mixture and the fact that he was awakened from sleep just prior to the interview, all suggested that the accused would be on the higher end of the continuum rather than the lower end at that time. In the light of Dr Lim's evidence and my finding that the accused was a drug addict and had in fact consumed heroin and erimin that morning, I accepted the accused's evidence that he had little or no recall of what transpired between him and Sgt Lai.

169 The trial judge concluded at p 805:

> In the light of the effect of the erimin and heroin on the accused, the absence of a Malay interpreter and the irregularities in the way Sgt Lai kept a record of what the accused said, I was of the view that it would be unsafe to admit in evidence what the accused had allegedly told Sgt Lai. In the exercise of my discretion therefore I declined to admit that alleged statement.

170 It is important to bear in mind that the trial judge in *Dahalan* did not reach his conclusion solely on the ground that the provisions of the PGO had not been complied with. Indeed at p 804, the trial judge in *Dahalan* said that it was settled law that an oral statement of an accused person would not be rendered inadmissible merely because of non-compliance with the mandatory provisions of s 121, relying on *PP v Mazlan bin Maidun and Anor* [1993] 1 SLR 512 ("*Mazlan*"). This would be a *fortiori* in the case of non-compliance with provisions in the PGO.

171 The defence did not seek to adduce evidence of the applicable provisions of the PGO at the time when SSI Zainal interviewed Ismil. Even if the applicable provisions were the same as those applicable at the time of *Dahalan*, the circumstances there were quite different from those before me as I have elaborated. For example, while the accused in *Dahalan* had little or no recall of what transpired between him and Sgt Lai, Ismil was able to recollect what had transpired between him and various officers. It should also be remembered that SSI Zainal was not at PCC when he was asked to interview Ismil. He was also not the IO. However, while SSI Zainal was at JWNPC, he should have recorded what Ismil had told him there and then on another piece of paper instead of doing so in his field diary much later in the day. Nevertheless, in the light of all the circumstances, I was of the view that Exhibit P152 and the material entries in the field diary were admissible. The question of the weight to be given to such evidence was another matter.

172 The next challenge was in respect of the occasion when Ismil was still in a briefing room at

JWNPC after he had been further questioned by SSI Zainal and he was having his nails clipped before he was brought to see ASP Bakar (see [47]-[48] above). I was of the view that the allegation of threats and pressure then were too vague to be considered the kind of threat that would render his subsequent statements inadmissible. It was not sufficient for Ismil to say that the officers did not believe him or continued to press him with questions. However, the defence submitted that something must have been amiss because there was an interval of 45 minutes between the time SSI Zainal concluded his interview and the time Ismil was brought to ASP Bakar at JWNPC, and the witnesses from CID appeared reluctant to elaborate on what transpired in that duration.

173 Again, I found such a submission to be unhelpful. If a threat, inducement or promise had been made to Ismil during that time at JWNPC which operated on Ismil's mind, he would be the best person to give evidence about it. Yet, he made only vague allegations about threats and pressure.

174 For the same reason, I also did not accept Ismil's evidence that when he gave his statement to ASP Bakar then, he could not "take the pressure any longer"[note: 178] or defence's submission that it was then that his will was sapped.

175 Although Ismil said that while he was at JWNPC he had told ASP Bakar that he had not taken his meal yet and ASP Bakar told him to give a statement first (see [53] above), neither of these allegations was raised as an inducement, threat or promise in the list of objections stated in pp 2 and 3 of the written submissions for Ismil for the *voir dire*. In any event, I did not accept that he had at that time told ASP Bakar that he was hungry or that ASP Bakar gave the response alleged. Indeed the alleged response of ASP Bakar was not even put to ASP Bakar during cross-examination. There was no suggestion that ASP Bakar himself had made any threat, inducement or promise when he was with Ismil at that time.[note: 179]

176 However, I accept that Ismil did mention while he was in a police car on his way to or from #04-154 that he had not had his meal. It is not disputed that at around 4pm at PCC he was given Milo and some biscuits. However, the objection raised in submissions for Ismil was not that he had given statements because he was hungry but that he was humiliated when he consumed a meal in the late afternoon of 7 May 2005 like an animal and this strengthened his impression that CID officers could do what they liked with him at PCC and affected the voluntariness of the statements given thereafter.

177 I did not accept this objection. Ismil could move his hands in front of him but not freely. With the benefit of hindsight, perhaps the officers should have released the shackles from his hands, while applying shackles to his feet, to enable him to move his hands more freely. However, there is no evidence that he asked them to do so so that he would be more comfortable while having some food and drink. They themselves had been busy that morning and had not consumed lunch until the time when Ismil was having some food and drink. They probably thought that they were treating him fairly by providing him with some food after they learned that he too had not eaten. In my view, he had used the episode to suggest that he had been humiliated to the extent that it affected his will when further statements were recorded from him. However, I found that he was not humiliated and the episode did not adversely affect his will then or subsequently.

178 I come now to the allegation that on 7 May 2005, when Ismil's cautioned statement was to be recorded by Inspector Ang, Sapiahtun had threatened Ismil that the court would take action against him if he did not sign on the charge of murder when the charge was read to him for the purpose of taking the cautioned statement (see [65] above). I concluded that Sapiahtun did not make such a threat. It was a matter of indifference to her whether he signed or not. His signature on the charge did not mean that he accepted that he was guilty of the charge and she was not even one of the

investigators. I did not accept that although Ismil was aware of the capital penalty stated on the murder charge, he reluctantly signed it because of Sapiahtun's threat, the Cantonment threat and the threats and pressure he faced from various CID officers at JWNPC and his humiliation. I have concluded that there was no Cantonment threat and the other threats and pressure were too vague and he had not been humiliated. I have also concluded that Sapiahtun did not make the alleged threat. In any event, the signature on the charge was immaterial. It was his cautioned statement that was significant.

179 Ismil's position was that his cautioned statement was given because of the factors already mentioned and Sapiahtun's threat. I have already dealt with them. In addition, Ismil said Sapiahtun had told him to provide a statement so that the charge (of murder) might be reduced (see [65] above). I concluded that Sapiahtun did not make such a promise or inducement. As an interpreter, it was of no concern to her whether he made a cautioned statement or not. The purpose of a cautioned statement is to alert an accused person to mention any fact which he intends to rely on for his defence. It is not to extract a confession from him. Indeed, while Ismil had alleged that Sapiahtun had told him to give a statement, he stopped short of saying that she told him to confess to the crime. A statement could be either exculpatory, incriminatory or neutral in nature. Furthermore, if she did tell him that the charge might be reduced and he genuinely believed this, it would only be natural for him to inquire of her subsequently or of one of the CID officers about the reduction of the charge. Yet he admitted he did not do so. His omission reinforced my view that no such inducement was given.

180 Although the defence submitted that I should not accept Sapiahtun's evidence generally, I disagreed. The defence's submission was based on one aspect of Sapiahtun's evidence regarding the notes she would keep. At one point she initially suggested she would make notes on a piece of paper and then transcribe it into a notebook if anything unusual occurred. She would also record the formal details of each recording session like the date and time and names of the accused and the recording officers.[note: 180] However, she subsequently said she threw away the notebook after she had recorded the information (she had written down) into a computer. It seemed to me from the elaboration that what she had thrown away was not a notebook but her notes and there was no notebook as such.[note: 181] Her omission to distinguish between the two during cross-examination was unsatisfactory. Nevertheless, for the reasons I have given, I was satisfied that her evidence on the alleged threat and the alleged inducement was true.

181 At this stage, I should mention another submission from the defence. It was submitted that the manner in which Ismil was treated was oppressive as he had been interviewed from 5.45am of 7 May 2005 up to 9.50pm the same day with short breaks, was only kept attired in t-shirt and shorts in an air-conditioned environment for most part of the day and even shackled whilst consuming snacks in the late afternoon.

182 I have set out at some length Ismil's movements on 7 May 2005. The interview sessions were not as long and the breaks were not as short as the defence was suggesting. I also accepted that he was feeling cold but did not have a cold and I concluded that his withdrawal symptoms were not as serious as he was suggesting in the *voir dire*. As mentioned, I also concluded that he was not feeling humiliated while consuming snacks in the late afternoon of 7 May 2005. In summary, I did not agree that he had been subject to oppressive treatment that day.

183 I come now to Ismil's allegation that on 12 May 2005, SSI Mazlan had been smoking and had raised his voice on several occasions, told Ismil not to waste his time and presented a picture of someone who was very angry and might resort to violence (see [76] above). I accepted the allegation that SSI Mazlan was smoking as Ismil could identify the brand of cigarettes being smoked

but smoking *per se* was not a threat although the defence submitted that smoking during such an interview suggested that SSI Mazlan was above the law. I would add that Ismil's memory of the brand of cigarettes that SSI Mazlan was smoking militated against his allegation that he was weak and confused because of withdrawal symptoms. Also, even if SSI Mazlan had told Ismil not to waste his time, I did not think this would objectively constitute a threat which would have caused Ismil to make further confessions on other days. Ismil was suggesting that this contributed to his overall fear of being assaulted ever since the Cantonment threat and the other factors mentioned but I have already dealt with those allegations. The other allegation about SSI Mazlan looking fierce or angry was again too vague to render any subsequent statement of Ismil's inadmissible. In *Gulam* ([13] *supra*), CJ Yong, delivering the judgment of the Court of Appeal, said at [57] that if all that the CNB officers did was to look fierce and threatening, that would obviously be insufficient to amount to a threat which would render any subsequent confession involuntary. In any event, Ismil had had previous brushes with the law. He would not have been as easily intimidated as he was suggesting.

184 The next allegation of Ismil was that on 3 June 2005, SSI Mazlan had informed him that Muhammad had implicated him and that he should do something to save Muhammad (see [110] above). There were two parts to this allegation. The first was that SSI Mazlan had informed Ismil that Muhammad had implicated him and the second was that Ismil should do something to save Muhammad.

185 Did SSI Mazlan tell Ismil that Muhammad had implicated him? SSI Mazlan's version was that he had said that Muhammad had revealed that he (Muhammad) was present at the scene of the crime. I was of the view that SSI Mazlan's evidence was the more probable of the two. By 3 June 2005, Ismil had already given various statements which were effectively confessions. CID was not trying to see if Ismil was going to implicate himself further but whether he was going to corroborate Muhammad's involvement in the murder.

186 In *Sharom bin Ahmad v PP* [2000] 3 SLR 565 ("*Sharom*"), CJ Yong, delivering the judgment of the Court of Appeal, said at [48]:

> The promise to procure a reduced charge would also amount to an obvious inducement to give a good statement in exchange for a non-capital charge. … On the other hand, we did not think that the same could be said of a mere reference to statements made by a co-accused, an accomplice or even a witness. … It was difficult to see how an accused person could perceive gaining any advantage or avoiding any evil by making a self-incriminating statement simply because he was told what his co-accused had said. On the contrary, it would seem proper that the accused should be kept informed of what kind of allegations have been made against him by other accused persons or witnesses so that he may properly defend himself against such allegations. Indeed, references to such other statements would assist the accused in deciding on what he should say to best present his defence and therefore should not be regarded as an inducement rendering the statement involuntary.

187 I concluded that when SSI Mazlan told Ismil that Muhammad had revealed that he too was present at the scene of the crime, this was not objectively a threat or inducement that could render any subsequent statement of Ismil inadmissible.

188 Even if SSI Mazlan had told Ismil that Muhammad had implicated him, I did not consider this in itself to be objectively a threat or inducement which would have caused Ismil to further implicate himself. If an accused person was told that someone had implicated him and the accused person was innocent, the natural reaction would be to continue to deny any involvement in the crime. An innocent person does not implicate himself just because he is told that someone else has implicated

him. Furthermore, an accused person can better defend himself if he is told about what someone else is saying against him.

189 As regards the second part of the allegation, I accepted that if SSI Mazlan had also told Ismil to do something to save Muhammad that might well be an inducement for Ismil to implicate himself in order to save Muhammad. Although Ismil's statement on 3 June 2005 placed Muhammad at the scene of the crime, it did seek to minimise Muhammad's role by suggesting that only Ismil was involved in the attack on the deceased. Nevertheless, I was of the view that SSI Mazlan did not tell Ismil to save Muhammad. Why would SSI Mazlan have said this? Ismil had already given prior statements which had already incriminated himself. Furthermore, if the intention was to save Muhammad in response to an inducement from SSI Mazlan, Ismil would have subsequently asked whether Muhammad had been released or whether the charge against Muhammad had been reduced. He never did. I find that there was no such inducement from SSI Mazlan.

190 The defence also submitted that although Ismil was questioned from 4.45pm on 3 June 2005, the recording of his statement only commenced from 6.15pm that day. It was submitted that the one and a half hours was time required to condition and prepare Ismil to give a statement favourable to the prosecution (see para 147 of the written submissions for Ismil). I was of the view that this was too vague an allegation. I accepted that Ismil did not immediately implicate Muhammad and the CID officers wanted to get the truth. The issue was whether they had used foul means to do so such as the alleged inducement by SSI Mazlan. I have found against such an inducement. There was no other specific allegation of a threat, inducement or promise that day. I also did not think it was right to infer any threat, inducement or promise merely from the one and a half hours it took to begin recording a statement from Ismil that day.

191 The defence also submitted that because ASP Bakar did not record Ismil's initial reluctance to implicate Muhammad on 3 June 2005, this demonstrated a consistent pattern of behaviour of only recording what the CID officers wanted to hear. "For that reason alone", the defence submitted that the 3 June 2005 statement should not be admitted (see para 146-149 of the written submissions for Ismil). The reference to a consistent pattern of behaviour suggested that the defence was referring not only to what had transpired on 3 June 2005 but also to other instances before. For example, when Ismil was first questioned by SSI Lai and Inspector Wee at 5.45am of 7 May 2005, he denied involvement in Mdm Tham's murder. This was not recorded by the CID officers. Also, presumably the defence was suggesting that all of Ismil's statements which were in issue should be inadmissible because the recorders did not record earlier denials of Ismil. I did not accept such a proposition which was too wide. The initial denials of Ismil were relevant in the *voir dire* to assist the court to assess the overall picture about voluntariness. However, the omission to record such denials did not *per se* render statements inadmissible.

192 When cross-examined, SSI Lai and Inspector Wee did not deny that on 7 May 2005, Ismil had initially denied being involved in Mdm Tham's murder. ASP Bakar also did not deny that Ismil was reluctant to implicate Muhammad initially on 3 June 2005. In the circumstances, I did not think that the omission to record these observations affected the admissibility of the statements.

193 To bolster the defence's suggestion that the various CID officers were only interested in securing confessions from Ismil, the defence submitted that despite observing that he was high in the early morning of 7 May 2005, the various CID officers did not have him examined by a doctor trained to assess withdrawal symptoms especially of Dormicum abuse.

194 In my view, such a submission did not help Ismil unless it was linked to some threat, inducement or promise or oppressive circumstances. When Ismil was observed to be high, this was

early in the morning of 7 May 2005. By the time Ismil was interviewed by SSI Zainal, SSI Zainal did not observe him to be high. Neither did any of the other CID officers that day or Dr Cheong. In the circumstances, I did not think that the omission to send him immediately for an examination by a doctor trained to assess such withdrawal symptoms rendered statements inadmissible if they were otherwise admissible.

195 The defence also submitted that if Ismil had been willing to give his statements voluntarily, there would have been no real need to record so many statements. This was an argument which in itself had no bearing on the issue of admissibility. If it was part of the allegations already dealt with, it added nothing to such allegations. In the circumstancs, I found that there was no threat or inducement and the circumstances in which his statements were recorded were not oppressive.

196 The defence also submitted that I should consider the constellation of factors from Ismil's withdrawal symptoms to the threats and inducements as well as oppressive circumstances. This submission assumed that I would accept the defence's submission on various factors which I did not. In any event, I did consider all the circumstances and I decided that all the statements of Ismil which were in issue were admissible in evidence.

The V*oir Dire* for Muhammad

197 The following nine statements allegedly made by Muhammad were in issue:

(a) A signed statement to SSI Mazlan on 30 May 2005 between 6pm and 8.05pm at interview room B at the office of SIS.

(b) A signed statement to SSI Ravindra Subramaniam ("SSI Ravindra") on 30 May 2005 between 9pm and 10.35pm at interview room B at the office of SIS. The interpreter was Mdm Masdiana Binte Ramli ("Masdiana").

(c) A signed statement to the IO on 30 May 2005 between 11pm and 11.30pm at interview room C at the office of SIS. The interpreter was Masdiana.

(d) A signed cautioned statement to Inspector Ang pursuant to s 122(6) CPC on 31 May 2005 between 2.40pm and 3.25pm at lock-up interview room 7 in PCC. The interpreter was Iskandar.

(e) A signed statement to the IO on 4 June 2005 between 2.05pm and 7pm at lock-up interview room 6 in PCC. The interpreter was Masdiana.

(f) A signed statement to the IO on 7 June 2005 between 2.25pm and 5.30pm at lock-up interview room 6 in PCC. The interpreter was Masdiana.

(g) A signed statement to the IO on 10 June 2005 between 2.40pm and 4.45pm at lock-up interview room 13 in PCC. The interpreter was Masdiana.

(h) A signed statement to the IO on 13 June 2005 at about 3.20pm outside the deceased's flat and at about 4pm inside the deceased's flat. The interpreter was Masdiana.

(i) A signed statement to the IO on 14 June 2005 between 11.15am and 12.40pm at lock-up interview room 6 in PCC. The interpreter was Masdiana.

For easy reference, a table of Muhammad's statements that were in issue is attached in Schedule B. It contains the same type of information as in Schedule A.

198 Muhammad's challenge to the admissibility of his statements was based on two broad reasons: (a) threats, assaults and inducements as well as oppressive circumstances; and (b) his consumption of Dormicum on 30 May 2005 and the effects of withdrawal. The most significant day for the purpose of the *voir dire* for Muhammad was 30 May 2005 as that was when he first gave a statement confessing to his involvement in a robbery at the deceased's flat. This statement was provided after he was allegedly abused verbally and threatened, was assaulted by having ice-cold water thrown at him and by physical blows, and was told that his case was only one of housebreaking or could be reduced to housebreaking.

30 May 2005 between 10am and 6pm

199 Muhammad was not arrested on the same day or in the same circumstances as Ismil. Muhammad had been asked to go to SIS' office at about 10am of 30 May 2005. When he did so, he was interviewed by SSI Mazlan, SSSGT Chandra and SSSGT Daniel Teo ("SSSGT Daniel"). The interview commenced at about 10.40am in room B of SIS' office. By about 6pm, the first of his statements in issue was recorded by SSI Mazlan. This was the first confession from Muhammad. Muhammad made many allegations as to what had transpired between 10.40am to 6pm before this first statement was recorded. I shall elaborate on these allegations later.

200 The evidence for the prosecution was as follows.

201 The IO had learned from Dr Christopher Syn ("Dr Syn"), an analyst attached to the DNA Laboratory for Forensic Science of the Health Sciences Authority, that a black purse which had been found lying on the ground floor outside of Block 185 contained the deceased's DNA and the DNA of a male person who was likely to be one of Ismil's brothers. That was why Muhammad was asked to go to SIS' office on 30 May 2005.[note: 182] Then, on 30 May 2005, the IO received confirmation from Dr Syn that Muhammad's DNA was found on the black purse.[note: 183] The information was disclosed to ASP Bakar. ASP Bakar then instructed the IO who in turn instructed SSI Mazlan to interview Muhammad. SSSGT Chandra and SSSGT Daniel were requested to assist in the interview. They were all part of Team E. When Muhammad arrived at the office of SIS, he was brought to room B. There, he was asked to remove his clothes while he was inspected for any injury on him. He removed his top clothing comprising a sweater and a T-shirt and then put them on after the inspection. Then, he lowered his jeans to a level below his knee and after inspection, he pulled his jeans up. SSSGT Chandra, as well as SSSGT Daniel Teo, interviewed him first in English while SSI Mazlan observed. General questions were asked initially such as who he was staying with, what he was working as and what his favourite game was. He was also asked to state what he was doing on 6 May 2005.

202 Muhammad was forthcoming in his responses initially. At some point in time, SSSGT Chandra asked him if he had come across any item that did not belong to him. Muhammad did not respond initially. He was hesitant and quiet. After the question was repeated, he said he came across a wallet, checked it, found nothing in the wallet and left it where he found it. I should mention that the wallet referred to was the same as the purse found lying on the ground floor outside of Block 185 Thereafter, SSI Mazlan took over the interview and spoke to Muhammad in Malay. There was a toilet break between 12pm to 12.10pm. After that, plain water and biscuits were brought into the room

which Muhammad consumed. There was also a lunch break between 1.05pm to 1.50pm but Muhammad said he was full. A Milo drink and biscuits were provided to Muhammad. SSSGT Chandra and SSSGT Daniel stayed with him in the room during the lunch break. After the lunch break, SSI Mazlan continued with the interview and ASP Bakar joined in between 1.50pm to 3pm. SSSGT Daniel was not present then and SSSGT Chandra was told to wait outside room B which he did until about 2.30pm. Then, SSSGT Chandra did some of his own work and left PCC at about 3.30pm and did not return to PCC until about 9.50pm. There were two other short breaks in the afternoon during the interview, one between 3pm to 3.15pm and the other between 4pm to 4.45pm.

203 In the meantime, after ASP Bakar left room B, SSI Mazlan continued with the interview. Some time before 4.50pm, SSSGT Daniel joined him. Thereafter, SI Noorma'at Bin Sawab ("SI Noorma'at") came into the room at about 4.50pm. SSSGT Daniel left shortly after that. SI Noorma'at left at about 5.20pm.

204 Shortly before 6pm, SSI Mazlan said that it could not be so coincidental for Muhammad to have found the wallet. Muhammad then informed SSI Mazlan that he wanted to say what happened to the "auntie", meaning Mdm Tham, whereupon SSI Mazlan proceeded to record a statement from Muhammad which first incriminated Muhammad, as well as Ismil. I will set out the material parts of that statement later.

205 SSI Mazlan, SSSGT Chandra and SSSGT Daniel did not notice that Muhammad was unwell in any way that day or that he was confused. They denied that before 6pm, he had been verbally abused in any way, or had ice-cold water thrown at him or that he was assaulted or threatened with assault. They denied he was told that Ismil had incriminated him or that his fingerprints had been found at the scene (of the murder) or that he had nothing to worry about or that his case was only one of housebreaking or would be reduced from murder to housebreaking.

206 ASP Goh Tat Boon ("ASP Goh") and ASP Ng Poh Lai ("ASP Ng") denied entering room B that day when Muhammad was present. SSI Mazlan also denied that either of these two officers were present in the room with Muhammad and him.

207 ASP Goh denied he had told Muhammad to admit to being involved in Mdm Tham's murder and ASP Ng denied verbally abusing or assaulting Muhammad in that room.

208 ASP Goh said he was involved in operations in respect of the murder up to 7 May 2005.[note: 184]

209 ASP Ng was the officer in charge of Team C of SIS as at 30 May 2005. He could only remember Ismil who was arrested on 7 May 2005. He had not seen Muhammad before. On 30 May 2005, he was no longer involved in any investigation in connection with the murder on 6 May 2005.

210 ASP Bakar was in room B on 30 May 2005 from 1.50pm to 3pm. Most of the interview was conducted by SSI Mazlan. Muhammad was denying any involvement in the murder. However, based on Muhammad's demeanour and the DNA found on the deceased's purse, ASP Bakar did not believe the denials. ASP Bakar left at 3pm as he saw no progress and he had other matters to attend to. He denied telling Muhammad that if he did not admit, he would put him in custody longer or that Muhammad cannot lie or run. During this time, Muhammad denied any involvement in the murder.

211 SI Noorma'at denied that he had taken a photograph of Muhammad in the room with a Polaroid camera, went out and came back to say: "Confirm this fellow, the witness says 'yes'.[note: 185] SSI

Mazlan also denied that SI Noorma'at did this.

212 The prosecution witnesses also denied that Muhammad was clad only in his underwear throughout the interview (including during the breaks) or that he was allowed to put on his clothes only when his photograph was being taken.

213 The prosecution produced a time-table of information from the evidence adduced and I set it out below:

Time	Officers Involved	Event
10.40am to 12.00pm	SSI Mazlan, SSSGT Daniel and SSSGT Chandra	Interview
12.00pm to 12.10pm	SSI Mazlan, SSSGT Daniel and SSSGT Chandra	Toilet Break
12.10pm to 1.05pm	SSI Mazlan, SSSGT Daniel and SSSGT Chandra	Interview
1.05pm to 1.50pm	SSSGT Daniel and SSSGT Chandra	Lunch Break
1.50pm to 3.00pm	SSI Mazlan and ASP Bahar Bakar	Interview
3.00pm to 3.15pm	SSI Mazlan	Break
3.15pm to 4.30pm	SSI Mazlan	Interview
4.30pm to 4.45pm	SSI Mazlan	Break
4.45pm to 6.00pm	SSI Mazlan (SI Noorma'at and SSSGT Daniel came in at 4.50pm. SSSGT Daniel left shortly whereas SI Noorma'at stayed until 5.20 pm).	Interview

214 I would add that according to the evidence from SI Noorma'at, when he entered the room, SSSGT Daniel was already in the room.

215 Muhammad's evidence was that he studied up to primary seven, extended. He first started taking drugs when he was 15 years old. He started with ganja, then Erimin and then heroin. He then took Dormicum, first orally and, from 2004, intravenously. He consumed Subutex when he was released from DRC in 2003. He had been charged with robbery in 1994 and with theft. In 1995, he was charged with theft again. In 1997, he was admitted to DRC for the first time. Upon his release in 1998, he was charged with possession of heroin. In 2000, he was charged for failing to turn up for a urine test and in 2001 or 2002, he was sent to a DRC a second time.

216 In the morning of 30 May 2005, he had taken one and a half tablets of Dormicum intravenously. He met the IO at about 10am on 30 May 2005 at PCC. He was brought to SIS' office on the 18th floor and referred to SSSGT Chandra who brought him to an interview room. SSI Mazlan and SSSGT Daniel were already in the room.

217 Muhammad said SSSGT Chandra told him to take off his clothes. Before he did so, Muhammad

asked "For what?" and was told he would know. After Muhammad had taken off his clothes, he was clad only in his underwear. He was told that Ismil had implicated him and repeatedly asked to admit to his involvement in the deceased's murder. He was verbally abused and shown a photo of a purse and told his fingerprints were found on that purse.[note: 186] The photo was similar to, but not as big as the one at Exhibit P54.

218 At one point, SSSGT Chandra told SSSGT Daniel to get some cold water. SSSGT Daniel returned with ice and water. Thereafter, SSSGT Chandra and then SSSGT Daniel each took a turn at throwing ice-cold water on him. He felt cold and was shivering. The air-conditioner was adjusted to lower the temperature. Then one of them left and brought more ice and cold water. One of them said: "Now you will know". Then they doused ice-cold water on his head many times. He still maintained that he did not know anything. Then SSSGT Chandra hit him once in the solar plexus. Muhammad dropped to his knees and cried. SSSGT Chandra told him to get up and said it would be better for him to admit, otherwise he would get worse treatment.[note: 187] Muhammad said he looked at SSI Mazlan's face and SSI Mazlan looked shocked. SSI Mazlan shouted at him and said many times: "Mad, better for you to admit. Even your brother had informed us that you were there at that place". He was experiencing withdrawal symptoms and his body felt weak. When water was splashed on him, it worsened his condition. He was shivering. He could not take it. This was between 10am to 12 noon. He was not allowed to sit and he felt like urinating. He was escorted to the toilet wearing his underwear only.

219 Shortly after Muhammad was brought back from the toilet to the room, SSSGT Chandra and SSSGT Daniel left. ASP Bakar entered the room and asked him to make an admission. However, before ASP Bakar entered the room, two other officers ASP Goh and ASP Ng had entered the room. ASP Goh asked him to admit to being involved in Mdm Tham's murder and then left. ASP Ng insisted Muhammad was at the scene of the crime and used an expletive on him. Then ASP Ng punched him in the same area where SSSGT Chandra had punched him. He fell down. He felt pain and cried. ASP Ng told him to admit otherwise he would get worse treatment. Muhammad still denied knowing anything and ASP Ng shouted at and scolded him.[note: 188] He did not have any lunch.

220 Muhammad said he was told to put on his clothes and a photograph was taken of him by SI Noorma'at. A few minutes later, SI Noorma'at returned with a photograph of Muhammad and said to SSI Mazlan: "Confirm, this is the fellow. According to the witness, this is the fellow". He was repeatedly told to admit that he was at the deceased's flat.[note: 189]

221 Muhammad said ASP Bakar subsequently entered the room and told him that if he did not admit, he would place Muhammad in custody for a longer period and he could do that. He was told that his fingerprint had been found on a purse belonging to the deceased and at the deceased's flat. He could not run away.[note: 190]

222 Muhammad's position was that he was clad in his underwear throughout the interview except for the time when SI Noorma'at took a photograph of him and he put on his clothes only before giving a statement to SSI Mazlan starting about 6pm.

223 In cross-examination, Muhammad's position vacillated. It was not clear from his evidence whether ASP Ng came into room B before or after ASP Bakar. Significantly, his position as to what caused him to give the statement to SSI Mazlan at about 6pm that day changed. Throughout the cross-examination of the witnesses for the prosecution, the sequence, according to Muhammad, was that ASP Ng had come into room B before ASP Bakar. This meant that even after he had had ice-cold water thrown at him and had been assaulted by SSSGT Chandra first and then by ASP Ng, he had still

not volunteered any statement. It was only after ASP Bakar had left that he did so. This was also the sequence in his evidence-in-chief. However, in cross-examination of Muhammad, his evidence was that it was shortly after ASP Ng had assaulted him that he volunteered a statement. This meant that ASP Ng came into room B after ASP Bakar and his assault was the last straw that broke Muhammad's will.

Muhammad's signed statement (with two sketches) to SSI Mazlan on 30 May 2005 between 6pm and 8.05pm

224 As I mentioned, Muhammad provided SSI Mazlan a signed statement on 30 May 2005 commencing from about 6pm to about 8.05pm. The statement came with a sketch of the deceased's flat with objects and two figures drawn therein. Muhammad had also drawn another sketch of two cupboards and a wallet inside one of the cupboards. The statement stated:

> On that day morning, about 9 am, my brother Ismil and I went to the Auntie's flat. Both of us took the staircase up from our flat to the auntie's flat at the 5th floor. We thought of robbing the auntie. The auntie's flat gate was closed and the door was closed too. Ismil knocked on the door about two to three times. The auntie opened the door. She was not shocked because I am sure she recognised both of us as her neighbours downstairs. Ismil was telling her something and she opened gate with the key. She said something but I could not understand. Both, Ismil and I entered the house. Ismil went into the kitchen at the same time calling the auntie. Ismil did not say any word but used hand signal to call the auntie. The auntie also then walked to the kitchen I was standing at the hall. I saw my brother was looking around at the kitchen as though he was searching for something. Then, I saw him, Ismil pulled a knife. He immediately faced the auntie and pointed it towards the auntie. It was in a threatening manner.
>
> I went into a bedroom closer to the entrance door. I ransacked. I ransacked the wooden cupboard used to keep clothing. I found a black wallet in the cupboard and took it. Then, I walked out of that room to the hall. I saw Ismil was slashing the auntie with the knife he was holding. She was slightly bending her body forward. From my thinking, she was avoiding the slash. I quickly went inside the same room I entered earlier and ransacked the other half part of the cupboard. From inside the said bedroom I could heard [*sic*] the auntie groaning but not so loud. After that I checked around the things in that bedroom. There were many boxes in the room. I walked out of the bedroom I saw the auntie was already lying on the floor at the hall. I was shocked as there were many blood on her body and floor. I wanted to go into the other bedroom but I saw an old Chinese man lying on a bed. He was quiet but both his eyes were opened and staring the ceiling. I decided not to enter his room I saw the auntie was lying and body slightly trembling. I looked around at the hall and thought there was nothing else to take. I called Ismil and said 'Mil Keluar' once.
>
> Once, we were outside the flat, I was walking down the steps with Ismil. I opened up the black wallet and there were about fifteen dollars inside. I took the money together with some coins inside. I put the money inside my pocket. My shorts, bermudas pocket. I then threw the wallet down from the fourth floor. I was just outside my flat. Ismil opened the gate with the key and opened the door too. He went to the kitchen and surely he went to the toilet. I entered my bedroom. When Ismil came out from the toilet, I asked him what he had done to the auntie. He said he do not know what he had done.

225 SSI Mazlan said that the statement and the sketches were made by Muhammad. He denied that he had made suggestions of facts for Muhammad to include in his statement or that he was referring to other statements when Muhammad was giving his statement. He denied that he had kept

on telling Muhammad that his brother had implicated him or that Muhammad's fingerprints were at the scene or that Muhammad's case was only housebreaking. He denied telling Muhammad that Muhammad had to do as he (SSI Mazlan) wanted.[note: 191] Although SSI Mazlan accepted that the sketches were his idea[note: 192], he denied that he had guided Muhammad on the drawing of various objects in the deceased's flat or on the second sketch or to place a wallet in a cupboard in the second sketch. He also denied that he was constantly referring to a stack of photographs on a table in room B while Muhammad was drawing.[note: 193]

226 Muhammad initially said that SSI Mazlan had first made his own drawing and asked Muhammad to copy it after which SSI Mazlan threw away his own sketch. As for an incomplete circle which was drawn by Muhammad to indicate a table, Muhammad said that as he was drawing an incomplete circle, SSI Mazlan told him that it was drawn at the wrong place and pointed to another spot. Muhammad then completed drawing the table at the new spot and wrote "MEJA" to identify it.

227 Muhammad also said he knew the layout of the deceased's flat because the layout was like his own.[note: 194] Then he said he had a friend staying on the second floor beneath the deceased's flat. He implied that that was how he knew the layout of the deceased's flat.[note: 195]

228 Muhammad also said he drew a cupboard in the second sketch after SSI Mazlan showed him a photograph of a cupboard. He also wrote the word "wallet" on the second sketch as instructed by SSI Mazlan.

229 Muhammad said he was suffering from withdrawal symptoms. He felt weak and his mind was blank. He did not have lunch on 30 May 2005 and was given Milo and biscuits after he provided a signed statement and sketch to SSI Mazlan. He was afraid he might be further assaulted if he did not give the statement or draw the sketches.[note: 196]

Muhammad's signed statement to SSI Ravindra on 30 May 2005 between 9pm and 10.35pm

230 After Muhammad had given his statement to SSI Mazlan, he was referred to SSI Ravindra. With the assistance of an interpreter, Masdiana, a statement was recorded from Muhammad between 9pm and 10.35pm of 30 May 2005.

231 The statement stated:

> Q1: On 6 May 2005, at or about 8.09 p.m., one Tham Weng Kuen, a 69 year old female Chinese, was found dead at her flat at Blk 185 Boon Lay Avenue #05-156. What do you know of her death?
>
> A1: In the morning of 6th May 2005, at about 9.00 am, my brother and I wanted to rob the house of the female Chinese staying in that flat. My brother's name is Ismil Bin Kadar. We went to the 5th floor and my brother knocked on the door of unit #05-156 at Blk 185 Boon Lay Avenue. I know the unit number as I too stay in the same block but at unit #04-154.

1.2: After my brother had knocked on the door about 2 to 3 times, the "auntie" opened the door. This is the woman who had died in the flat later. My brother spoke to the "auntie". I did not hear what was said between them. I also do not know what language they spoke in. The auntie then opened the iron gate and invited us in. She knew that we stayed at the 4th floor of the same block. My brother and I entered the flat.

1.3: My brother went straight to the kitchen. From the kitchen, he called the "auntie" to go to the kitchen. At that time, I was standing in the living room. I saw my brother looking for something in the kitchen. From where I stood, I saw my brother taking a knife from the right side of the kitchen. He then pointed the knife at the "auntie" who was very near to him. He put his forefinger to his lips to indicate to the "auntie" to keep quiet.

1.4: There are two rooms in that flat. I went inside one of the rooms. I opened a tall wooden cupboard. I searched the inside of the cupboard. I found a small leather "bag" with a zipper. It was black in colour. I put the "bag" in the side pocket of my bermudas I was wearing. I went back to the living room. I saw my brother slashing the "auntie" with a knife. They were at the back of the kitchen at that time. I think it was the same knife he took from the kitchen to slash the "auntie". The "auntie" was groaning.

1.5: I then re-entered the room and searched the same cupboard again. There were 4 doors to the cupboard. I did not find anything of value in the cupboard. I searched other areas in the room. There were many boxes in the room. I did not open the boxes. I then came out of the room. I saw the "auntie" lying on the floor at the living room. The "auntie's" clothes were full of blood. There was also a lot of blood on the floor where she laid. Though she was still breathing, she looked like she was dying. I was shocked to see that. My brother then went into the room I had searched. I did not notice if there was blood on my brother's clothes. He was not holding the knife then.

1.6: I wanted to go to the other room. As I was outside that room, I saw an "uncle" lying on the bed. His eyes looked up at the ceiling. He was an old man. He looked like a sick man. I don't think he saw me. I then searched at the living room to see if I could find anything of value. When I could not find anything of interest in the living room, I called out to my brother as I wanted to leave the place. My brother came out of the room. He was not holding anything with him. Both of us left the flat. I closed the door and my brother closed the gate.

1.7: When we walked down the stairs, I took out the "bag" which I took from the cupboard. Inside, there were fifteen dollars inside the "bag": a ten dollar note, a two dollar note and three one dollar coins. I put the money into my pocket. From the 4th floor, I threw away the "bag". The "bag" landed on the ground floor of the block. My brother and I went back to our flat at the 4th floor. When we entered the flat, my brother went straight to the kitchen toilet. I went to my room. My mother was in the other room at that time. I heard water running in the toilet which my brother used. A while later, my brother came to the room. His hands were wet. I then asked him what he did. What I meant to ask from it was why he had slashed the "auntie". He replied that he did not know what he did.

Q2: What were you and your brother wearing when you entered the "auntie's flat?

A2: I was wearing a red/yellow surf shorts and a beige round neck t-shirt. My brother wore red/black shorts and "chocolate" round neck t-shirt.

Q3: How did you learn that the auntie had died?

A3: That very night, I saw a lot of police going to the "auntie's flat. I then realised that she must have died.

232 SSI Ravindra said that the IO had told him that Muhammad had admitted to an offence of murder but did not give details of the admission. Muhammad was handed over to him by SSI Mazlan and SSSGT Daniel outside an interview room at SIS' office. Muhammad was handcuffed. Masdiana was also present. Muhammad was brought to SSI Ravindra's office which was also on the same floor. There, Muhammad gave the statement in Malay which was interpreted by Masdiana. Muhammad appeared normal and very lucid and well.[note: 197] The words in inverted commas like "auntie" and "bag" were Muhammad's own words in English. After Muhammad's statement was recorded, he was handed over to two officers SSI Mazlan and SSSGT Chandra.

233 SSI Ravindra denied that the first thing he told Muhammad when he commenced recording of his statement was that he had already confessed to SSI Mazlan. He also denied that he had with him the statement earlier recorded by SSI Mazlan that evening or that he was constantly referring to that statement or that he was guiding Muhammad as to what he should say in the statement that he (SSI Ravindra) was recording. SSI Ravindra said Muhammad did not deny involvement in the murder.

234 Masdiana also denied that SSI Ravindra had told Muhammad that he had already confessed to SSI Mazlan.[note: 198] She did not recall Muhammad having told her, "If I say I never do, will all of you believe me?"[note: 199] She accepted that it was she who used words like "groaning" and "fore-finger" but she said it was to state what Muhammad was describing to her.

235 The IO said he asked SSI Ravindra to record a statement from Muhammad because SSI Ravindra was not involved in the case then. The IO wanted to see if there was any difference between Muhammad's statement to SSI Mazlan and the one to SSI Ravindra.[note: 200]

236 Muhammad said he had told SSI Ravindra that he did not know anything. However, SSI Ravindra reminded him that he had already given a statement to SSI Mazlan and also said that his brother had implicated him so he could not run away. SSI Ravindra read out the earlier statement and placed it next to a computer. He said SSI Ravindra told him what to say in his statement to SSI

Ravindra. He said Masdiana had asked him whether it was true that he did not do it and he had replied "If I told you that I did not do it, would all of you believe me?" She then kept quiet. He felt sad and was in pain. His body was weak. At the end of the recording of the statement, he also felt sleepy. When Masdiana was reading his statement back to him, he dozed off. She tapped him on his shoulder and asked him whether he was listening or not. He was also feeling cold. He thought that if he did not provide a statement, he would be further assaulted.[note: 201]

Muhammad's signed statement to the IO on 30 May 2005 between 11pm and 11.30 pm

237 Thereafter, Muhammad provided another statement this time to the IO between 11pm and 11.30pm with Masdiana as interpreter. The IO's questions and Muhammad's responses were as follows:

> Through the Malay interpreter Masdiana Ramli, I asked the Muhammad Bin Kadar where are his clothing that he wore to the deceased's house on 6 may 2005.
>
> Muhammad replied "The clothing are still at my house. The skipper [*sic*] that I wore to that day had been stolen."
>
> Through the Malay interpreter Masdiana Ramli, I asked the Muhammad Bin Kadar, where are Ismil Bin Kadar clothing that he wore to the deceased's house on 6 May 2005.
>
> Muhammad Bin Kadar replied:-
>
> "Ismil was wearing a brown round neck T-shirt and a black and red colour short. When we returned home from the auntie's house, I saw Ismil went to the kitchen and washed his hand. I went to the bedroom. When Ismil came into the bedroom, he was still wearing the same T-shirt and shorts. Shortly, he went to the kitchen again. When he returned to the bedroom, he did not wear the T-shirt anymore. I did not see the T-shirt in the house again. I did not know what Ismil has done to the T-shirt. I also did not see the black and red shorts anymore in the house. Ismil was wearing the blue slipper and I did not know where is the slipper now."

238 The IO said that the purpose of asking the questions was to ascertain the whereabouts of the attire of Muhammad and Ismil which was worn to the deceased's flat.[note: 202] The IO denied that he had orchestrated the interview by SSI Mazlan, SSI Ravindra and the latest one on 30 May 2005 to break Muhammad to give information to implicate himself.[note: 203]

239 Muhammad said SSSGT Chandra brought him away from SSI Ravindra's office and back to the same interview room as he had been in earlier that day. The IO was present. He said the IO asked him to give a statement and thereafter he could tell the court that he did not do it.[note: 204] He was still in fear and felt pressured. He was suffering withdrawal symptoms, feeling cold and his whole body was in pain. Muhammad said that the IO had insisted that he mention the colour of Ismil's clothing and he just said whatever colour he could think of otherwise he would be assaulted again.[note: 205] After he had given his responses to the IO, he was given some food.[note: 206]

240 Muhammad added that he had merely told the IO what he was wearing on 6 May 2005 and he told the IO that he did not know anything about the murder.[note: 207] He said that the responses did not come from him and he was forced to sign the statement recorded by the IO because he was afraid he would be further assaulted and the IO had told him that Ismil had implicated him and his

fingerprints were found on the deceased's purse.[note: 208]

31 May 2005 visit to #04-154

241 Thereafter, in the early hours of 31 May 2005, Muhammad was brought to #04-154. He said that the police officers were ransacking his room and his mother's room and kitchen to look for the clothing and slippers that he had mentioned.[note: 209] SSSGT Chandra was also present and was pulling and pushing Muhammad as though he was unhappy. It was past 1am when Muhammad got back into a van at Block 185 to return to PCC.[note: 210] When he returned to the lock-up at PCC, he was in pain and felt very weak. He laid down in his cell which was a padded one.[note: 211]

Pre-statement medical examination on 31 May 2005 between 12.10pm and 12.25pm

242 On 31 May 2005, Muhammad was brought to AH for a pre-statement medical examination which was conducted by Dr Tan Hsiang Lung ("Dr Tan") between 12.10pm and 12.25pm.

243 Dr Tan's report stated that Muhammad claimed to be well and had no complaints. A clinical examination revealed he was calm, alert and co-operative. He was oriented to time, place and person. His gait was normal and there was no abnormal eye sign. There was no evidence suggestive of any drug abuse at the time of the examination.

244 Muhammad said that on the way to AH, one of the escorting officers, SSSGT Kamaruddin Bin Md Shariff ("SSSGT Kamaruddin"), told him: "It's luckily [*sic*] you admitted. If not, I will enter that room. How---you look at my face. How did you find it?" Muhammad responded by saying that the officer looked fierce and the officer responded: "I am the no nonsense type".[note: 212] SSSGT Kamaruddin also informed him about a metal implant in his right or left leg. Muhammad was aching and feeling weak at that time because of withdrawal. He was afraid when he was examined by Dr Tan. He was afraid to tell Dr Tan about his feelings. He was afraid that upon his return from hospital, he would get worse treatment. Neither did he have the courage to tell the doctor who conducted the post-statement examination what he truly felt.[note: 213] He did not tell either doctor about the assaults because of the presence of escorting officers.[note: 214]

Muhammad's signed cautioned statement to Inspector Ang on 31 May 2005 between 2.40pm and 3.25pm

245 After the pre-statement examination, Muhammad was brought back to PCC. Inspector Ang recorded a cautioned statement from him pursuant to s 122(6) CPC in room 7, PCC lock-up between 2.40pm and 3.25pm of 31 May 2005. The interpreter was Iskandar. A charge of murdering Mdm Tham on 6 May 2005 between 8am and 2pm at the deceased's flat in furtherance of the common intention of Ismil and Muhammad was read out to him. Muhammad was recorded as stating:

> I never expect that this thing can happened [*sic*]. I have no intention to kill the woman. I went there just to rob her. I never expect Ismil did it but I am also involved. I hope that this charge can be reduced. I hope the Judge can consider my case.

246 Inspector Ang and Iskandar denied that Inspector Ang had told Muhammad that he had already confessed, it was a case of robbery only, Muhammad could explain to the judge, Inspector Ang would write for him, the charge would be reduced or his brother had already implicated him. However, Inspector Ang accepted that the cautioned statement was written by him (Inspector Ang) and signed by all three, Muhammad, Iskandar and Inspector Ang. Inspector Ang and Iskandar also denied that

the words in the cautioned statement came from Inspector Ang. Inspector Ang and Iskandar did not notice Muhammad to be suffering from withdrawal symptoms such as general weakness, aching joints, backache, anxiety, apprehension and shivering.

247 Iskandar also denied that he had told Muhammad that he had better co-operate as he had already confessed.

248 Muhammad said that his withdrawal symptoms were worse when he was with Inspector Ang and Iskandar. He was afraid of further assault. He said he told Inspector Ang that he did not commit the crime and had initially refused to sign the cautioned statement after the charge of murder was read to him. However, he eventually signed because of the fear of further assault. He said that Inspector Ang had told him that his brother had implicated him and he could not escape anymore and that the charge would be reduced. The interpreter had told him that he had better co-operate. He signed the cautioned statement also because of his fear of further assault.

249 He accepted that he did not raise the subject of the reduction of the charge with the court although he was brought before the court on 1st, 8th and 15th June 2005 on a charge of murder. Neither did he inquire of the IO or Masdiana about a reduction of the charge even though he had met them on various other occasions after 31 May 2006 as I shall elaborate below. He said that he trusted Inspector Ang but not others.[note: 215]

Post-statement medical examination

250 After Muhammad had given his cautioned statement, he was brought to AH for a post-statement medical examination. Dr Charles Johnson ("Dr Johnson") examined him at 4.38pm. His report stated that Muhammad denied having any injuries and the examination did not reveal any external injuries. His vital signs were normal. He did not notice Muhammad to be suffering from benzodiazepine withdrawal symptoms such as aches or shivering. Dr Johnson is a specialist in emergency medicine and received training for withdrawal of benzodiazepines.[note: 216]

Remaining five signed statements of Muhammad between 4 to 14 June 2005

251 I will deal with the remaining five signed statements of Muhammad which were recorded by the IO between 4 to 14 June 2005 together. Masdiana was the interpreter.

252 On 4 June 2005, Muhammad provided a signed statement at room 6 of PCC lock-up. This was both in a narrative and a question and answer form. In this statement, he described what he did earlier in the morning of 6 May 2005 and mentioned that Ismil had asked him to join in a robbery. He followed Ismil to the fifth floor of their block. He elaborated as to how they gained entry into the deceased's flat. He described how he was ransacking a cupboard and took the black purse (on which his DNA was found). He saw Ismil slashing Mdm Tham with a knife. He also described how they left, his taking $15 from the black purse and throwing it onto the ground floor and what he and Ismil did upon returning to their flat. He was apparently asked to draw a layout of the deceased's flat and mark the location of various items and persons and a sketch of the slipper he had worn to the deceased's flat and the knife that Ismil used. The questions and responses as recorded by the IO were as follows:

> *Q![sic]*: Can you draw me a lay out of the old lady's house including the position of the cupboard, boxes, bed which the old man was lying? (accused was given a piece of paper and a pen).

A1: (recorder's note: The accused drew a sketch with the location of the cupboard, boxes and position of the old man lying on a bed in the bedroom. The accused signed on his sketch. The interpreter and I also signed his sketch).

Q2: Can you marked A on your sketch to indicate your position when "MAIL" gestured to the old lady to go over to the kitchen?

A2: (recorder's note: the accused marked A in the living room).

Q3: Can you marked B on your sketch to indicate "MAIL" position when he pointed the knife at the old lady and gestured to her to remain quiet in the kitchen?

A3: The accused marked B in the kitchen.

Q4: Can you marked C on your sketch to indicate the old lady position when "MAIL" pointed the knife at her and gestured to her to remain quiet in the house?

A4: The accused marked C in the kitchen.

Q5: Can you marked D on your sketch to indicate "MAIL" position when you saw him using the knife to slash the old lady?

A5: The accused marked D in the kitchen.

Q6: Can you marked E on your sketch to indicate the old lady position when "MAIL" used the knife to slash her in the house?

A6: The accused marked E in the kitchen.

Q7: Can you marked F on your sketch to indicate your position when you saw "MAIL slash the old lady in the house?

A7: The accused marked F in the living room.

Q8: Can you draw and marked G on your sketch to indicate the old lady position when you saw her lying on the floor in the house and she was trembling?

A8: The accused drew a human figure lying side way and marked G in the living room.

Q9: Can you marked H on your sketch to indicate your position when you saw the old lady lying on the floor in the house and she was trembling?

A9: The accused marked H in the living room.

Q10: Where is your slipper that you wear to the old lady house?

A10: It has been missing outside my house. After I was released on bail for drug offence on 14 May 2005, I went home and found that all the shoes and slippers placed outside my house were missing.

Q11: Can you draw a sketch of your slipper?

A11: The accused drew a sketch of a slipper and he signed the sketch after he finished. The interpreter and I also signed the sketch of a slipper.

Q12: Can you draw a sketch of the knife that "MAIL" used to point and slash the old lady in the house?

A12: The accused drew a sketch of a knife and he signed the sketch after he finished. The interpreter and I also signed the sketch of a slipper.

253 On 7 June 2005, Muhammad provided a signed statement at room 6, PCC lock-up. Most of the statement dealt with events from 1pm of 6 May 2005 and subsequent days. Paragraphs 30 and 33 of this statement read:

30 The following Thursday which was 12 May 2005 at about 6.00 pm, plain-clothes police officers came to my house and invited my mother, "MADI", "HAT" and myself to CID for interview in regards to this case. My family members including myself went to CID. At CID, I was asked what I knew about the murder of the old lady. I told the police officers that I did not know anything about this murder. At that time, I was lying to the police officer when I said that I did not know anything about the murder. I only told the police from the time "HASSIM" came to my house on 6 May 2005. I even lied to the officer that "HASSIM" came to my house at 9.00 am which in actual fact, he came to my house at about 10.15 am as stated in my previous statement recorded on 4 Jun 2005. I was trying to cover the fact that I was at the old lady's house from 9.00 am to 10.00 am plus.

33 On 30 May 2005 at about 10.00 am, I reported at CID. I was then interviewed by the CID officer regarding this case. Initially, I denied to the officer that I was not involved in the murder of the old lady but subsequently I confessed to the CID officer that I was involved in the case as I knew that I would never be able to run away from the law. The police will soon find out that I was involved as "MAIL" would have implicated me. It is better for me to confess to the police now than later.

254 On 10 June 2005, Muhammad provided a signed statement at room 13, PCC lock-up. The statement was in the form of questions and answers. Questions and answers 13–29 and 42–44 were as follows:

Q13: On 6 May 2005, prior to this incident, did anyone wake you up that morning?

A13: I woke up myself. This happened everyday.

Q14: On 6 May 2005, MAIL or you work up first?

A14: I woke up first.

[emphasis in original]

255 On 13 June 2005, Muhammad was brought to Block 185. The IO said he asked Muhammad to lead them to the deceased's flat which he did. Outside the deceased's flat, Muhammad provided a statement

Q15: Few days prior to this incident, did anyone suggest or discuss with you to do robbery at your neighbours?

A15: There was no suggestion or discussion about robbery few days before the incident. MAIL only suggested to me to *rob* our neighbour was on the morning before the incident.

Q16: On 6 May 2005 in the morning before the incident, MAIL told you to do robbery or housebreaking?

A16: He told me to do robbery.

Q17: How do you and MAIL intended to carry out the robbery on your fifth floor neighbour?

A17: MAIL did not tell me what to do. I merely followed MAIL.

Q18: Did you or MAIL bring any instrumental to commit the robbery?

A18: We did not bring anything.

Q19: Did MAIL ask you to search the deceased's house for valuable?

A19: He did not ask me to search. It was my own idea.

Q20: How many times did MAIL slash the old lady?

A20: I only saw MAIL slashed the old lady once when he was in the kitchen near the window. The old lady bent down to her right as she was trying to avoid MAIL.

Q21: Did you see MAIL fell down onto the floor in the house?

A21: No, I did not see.

Q22: Did you see the old lady fell down on the floor in the house?

A22: No, I did not see.

Q23: Did you see MAIL hurt the old lady in the living room?

to two questions from the IO. The statement was on what transpired in the morning of 6 May 2005 in respect of gaining entry into the deceased's flat, the attack on the deceased and the ransacking. It also described his removal of $15 from the black purse and throwing it away.

256 On 14 June 2005, Muhammad provided a signed statement at room 6, PCC lock-up. This was in the form of questions and answers. Questions and Answers 49–51 stated:

A23: No, I did not see.

Q24: When you saw MAIL slashed the old lady in the kitchen, why you did not stop MAIL?

A24: I just let him do. I pretended I did not see.

Q25: Prior to this incident, did you ever visit the old lady at her house?

A25: No. I did not.

Q26: Prior to this incident, did you ever enter the deceased's house?

A26: No, I did not.

Q27: Prior to this incident, did you ever engage any conversation or greeting to the old lady?

A27: No, I did not.

Q28: You saw MAIL holding a knife. Beside the knife, did you see him carrying or holding other weapon in the house?

A28: I only saw him holding the knife.

Q29: At anytime in the old lady's house, did you or MAIL hurt the old man lying on the bed?

A29: I did not hurt him. I do not know whether MAIL had hurt him.

...

Q42: Did MAIL tell you why he wanted to slash the old lady?

A42: He did not tell me.

Q43: What was MAIL behaviour when he and you went to the old lady's house?

A43: He was a bit *steam*. He was able to walk and talk properly. He knew what he was doing.

Q44: What was your behaviour when you were in the old lady house?

A44: I was a bit *steam* but I know what I am doing.

…

Q49: Now, I showed you a pair of Ocean Pacific (OP) slipper. Can you tell me whether it look similar to your slipper that you worn to the old lady's house on 6 May 2005? (recorder's note: accused was showed a pair of OP slipper with black base and brown strip).

A49: It is different. My "*chocolate*" stripe and the black base of my slipper are made of soft rubber material. They do not absorb water.

Q50: Did you see any injuries sustained by the old lady when you saw her lying and trembling on the floor in the living room in her house?

A50: I saw her head and face were covered with a lot of blood. Her clothing was also covered with blood. She was still bleeding and I did not see where it was bleeding.

Q51: Did MAIL or you sustain any injury when both of you were in the old lady's house?

A51: I did not sustain any injury. I did not know whether MAIL was injured.

[emphasis in original]

257 The IO and Masdiana said they did not notice Muhammad exhibiting any drug withdrawal symptoms at the times when his statements were provided. They denied that his statements were given in response to suggestions from the IO.

258 The IO denied that he had been angry or stared aggressively at Muhammad or told him that his brother had implicated him or told him that he (Muhammad) was at the scene of the crime.

259 As for the sketch of the layout of the deceased's flat with objects and figures therein, the IO and Masdiana also denied that the IO had guided Muhammad in drawing that sketch or in inserting the objects and figures therein. The IO also denied that he had simply asked Muhammad to draw a knife and a knife was drawn.

260 Muhammad's evidence was that his withdrawal symptoms became worse as he provided each statement to the IO between 4 to 14 June 2005. His withdrawal symptoms stopped about one and a half to two months later.[note: 217] He said that each time he told the IO that he was innocent but the IO did not believe him. Nevertheless, he signed each statement because of his fear of further assault and because the IO had not looked very happy. He had also lost hope.

261 He had co-operated with the IO in giving the 4 June 2005 statement because the IO had promised to reduce the charge.

262 He had copied the sketch of the layout of the deceased's flat and the objects and figures therein from the sketch he had drawn for SSI Mazlan on 30 May 2005.[note: 218]

263 He drew a sketch of the slipper not in response to the IO's questions as set out above but because the IO had told him to draw the slippers he usually wore.[note: 219]

264 Also, he had drawn a sketch of a knife not in response to the IO's questions as set out above but because the IO had asked him to draw a knife.[note: 220]

265 He had not confided in Masdiana about his fears or concerns because once he had asked her whether she would believe him if he said he did not do it and she had remained quiet.[note: 221]

266 He said the contents of each of these statements came entirely from the IO or partly from the IO and partly from him.

Evidence of Dr Winslow

267 The prosecution also called Dr Winslow as a witness in the *voir dire* for Muhammad's statements to give expert evidence on the relevance of withdrawal symptoms from Dormicum and Subutex. Dr Winslow had interviewed Muhammad on the same three days when he interviewed Ismil, *ie*, 26 April, 4 and 8 May 2006, but he interviewed them separately, one after the other. The material part of his report dated 11 May 2006 stated:

> 7 His account of his withdrawal symptoms was mainly a feeling of weakness with bone aches, and feeling cold. He did report telling the interrogators that he was a drug addict, but there is no documented account of him asking for additional medical attention or medicines for withdrawal. There was minimal symptoms of drug withdrawal like nausea and bone aches. He did not have any vomiting, tremors, running nose or documented diarrhoea. He did not request to see a doctor during his interrogation or early incarceration.
>
> 8 He was able to give a clear and consistent account of events that happened after his detention on the 30th May 2005. He was also able to give an account of where and approximately when the statements were taken.
>
> 9 I have also noted that the examining doctors at Alexandra Hospital, Dr. Tan Hsiang Lung and Dr Charles Johnson who did the pre and post statement examinations respectively on the 30th May 2005, did not note any significant withdrawal symptoms from either benzodiazepine or opoid drugs. The recorded vital signs (i.e. pulse, blood pressure and respiration) of the accused were also normal and the pain scale was not significant. The toxicology also did not show the presence of any subutex or dormicum in his blood.
>
> 10 In my opinion, the second accused, Muhammad bin Kadar is likely to have had mild physical withdrawal symptoms from dormicum and/or subutex during the recording of his statements. As in his self-report, these symptoms were bone aches and a feeling of coldness. The symptoms were not significant enough to be noted by attending police or medical officers and not emphasized by himself until much later. I am of the opinion that the withdrawal from his drug use is unlikely to have had a significant effect on his ability to provide his statements.

268 Dr Winslow said that Dormicum is a short-acting hypnotic drug of the benzodiazepine group. It mainly causes sleep and a reduction in anxiety. In the local context, drug addicts use it to get a feeling of euphoria. Mild symptoms would be anxiety, a sense of apprehension, dizziness, muscle stiffness and insomnia. The more severe withdrawal symptoms would include more severe anxiety with tremors and possibly even panic attacks, nausea with vomiting, delirium, hallucinations and even

confusion and seizure. Joint aches and headaches are not specific to Dormicum withdrawal and can be mild to severe.[note: 222]

269 During the second interview, Muhammad mentioned that he had had difficulty sleeping and felt like going to the toilet many times.[note: 223] In Dr Winslow's opinion, most of the withdrawal symptoms would be in the first day and then would taper off.[note: 224]

270 Dr Winslow agreed that Muhammad would be very apprehensive if Muhammad had been punched twice, had been doused in cold water several times, denied involvement in murder and was disbelieved and told repeatedly that Ismil had implicated him and that his case was only housebreaking and robbery.[note: 225] Muhammad's clarity and consistency could have come from his having sight of documents in the case.[note: 226]

271 Muhammad did tell Dr Winslow on 8 May 2006 that he had been punched in the solar plexus and had had cold water poured on him and he signed untrue statements because he was afraid that he would be tortured again.[note: 227] When Dr Winslow said Muhammad's use of drugs did not really affect him, Muhammad said: "Yes, but sometimes I am forgetful".[note: 228]

The Court's Decision on the *Voir Dire* for Muhammad

272 I will first deal with the issue of Muhammad's withdrawal symptoms. As was the case for Ismil's *voir dire*, Muhammad's counsel submitted that I should not rely on the observations of various SIS officers (and presumably of the interpreters as well) and of the general medical practitioners because none of them was trained to observe or assess withdrawal symptoms, unlike Dr Winslow.

273 I was of the view that although such witnesses were not experts like Dr Winslow, their evidence from their powers of observation could not be rejected outright. Furthermore, Dr Johnson was trained on withdrawal symptoms from benzodiazepine consumption. The weight to be attached to their evidence was another matter. Indeed, the defence must have thought that what they had observed might be pertinent otherwise why suggest to them that Muhammad was suffering from withdrawal symptoms?

274 None of the SIS officers or interpreters who had come into contact with Muhammad between 30 May to 14 June 2005 and who had given evidence in the *voir dire* had noticed that he was unwell in any way.

275 Furthermore, Dr Tan and Dr Johnson, each of whom conducted the pre-statement and post-statement examinations respectively, had not noticed that Muhammad was in any way unwell.

276 Significantly, Muhammad did not mention to any SIS officer or interpreter that he was suffering from withdrawal symptoms at any time before or after 6pm of 30 May 2005 and in the next two weeks. There was no reason for him to hold back such information if he was suffering from withdrawal symptoms as badly as he was suggesting.

277 His omission to disclose any withdrawal symptoms to Dr Tan or Dr Johnson was even more pertinent. Indeed, he could not give any reason why he omitted to do so if he was suffering badly from such symptoms. The presence of escorting officers from CID would not deter him from making such disclosure and indeed he did not suggest otherwise. His evidence was only that the presence of the escorting officers deterred him from disclosing the threats and assaults.

278 Even when he was interviewed about a year later by Dr Winslow, he admitted that his use of drugs did not really affect him at the material time except for forgetfulness.

279 I was of the view that it was likely that Muhammad was suffering from withdrawal symptoms on 30 May 2005 and shortly thereafter but not so much as to make him as weak as he was suggesting or render him more susceptible to threats, assaults or inducements or even to suggestions from SIS officers.

280 Indeed, it was not suggested by his defence that even if I were to reject its submission on various threats, assaults and inducements and oppressive circumstances, I should nevertheless refuse to admit the statements in question because they were given while he was in such a weakened state of mind that it would be unsafe to admit them.

281 The crux of Muhammad's challenge based on the threats, assaults and inducements and oppressive circumstances was the alleged assaults on 30 May 2005. By "assaults", I mean his having been doused with ice-cold water and the physical blows.

282 As mentioned above, Muhammad's initial position was that he was still holding out and denying any involvement in the murder even after he was allegedly doused in ice-cold water and then assaulted by SSSGT Chandra. He still held out and continued to deny his involvement after he was allegedly assaulted by ASP Ng. His initial position did not state clearly what then caused him to eventually volunteer a statement to SSI Mazlan except a vague reference to a fear of further assault.

283 In cross-examination, he shifted his position. He said that it was shortly after ASP Ng had assaulted him that he volunteered a statement but, based on his initial sequence of events, ASP Ng had assaulted him before ASP Bakar had entered room B and it was common ground that he still did not volunteer a statement while ASP Bakar remained in the room. It seemed to me that Muhammad had shifted his evidence because he realised that it was not believable that he had held out against the water treatment and blows only to cave in a few hours later even though the assault had stopped for some time. Furthermore, I noted that he had not complained about the water treatment or blows to any other SIS officer or interpreter.

284 Neither did he complain to either Dr Tan or Dr Johnson. Indeed, when he was examined by Dr Johnson, he denied having any injury. I did not accept that he did not complain because of the presence of escorting officers.

285 While I accepted that SSSGT Kamaruddin (one of the escorting officers) probably did speak to Muhammad and tell him about a metal implant in one of his legs, I did not accept that SSSGT Kamaruddin had said words to the effect that it was lucky that Muhammad had made a confession otherwise he would enter the room or that SSSGT Kamaruddin had said he was the no-nonsense type. SSSGT Kamaruddin was not involved in the interviews on 30 May 2005 and had no reason to intimidate Muhammad.

286 Based on his evidence, Muhammad had been coerced into confessing that he was involved in a murder case. He must have realised the gravity of his confession. The first thing he would have done would be to extricate himself from the confession as soon as possible, if he had been coerced into giving it. The best way would be to tell someone else like a doctor. Yet, he did not.

287 Neither did Muhammad inform or attempt to inform the court of any assault when he was brought before the court on three occasions in June 2005.

288 True, he did mention the water treatment and blows to Dr Winslow but this was almost a year later in May 2006. By then, he had had plenty of time to concoct his evidence.

289 I also noted that as he "recounted" the experience before me, he did not exhibit any indication of trauma or bitterness or sadness as might be expected.

290 I rejected Muhammad's allegation about the water treatment and the blows which he allegedly suffered from on 30 May 2005.

291 Was Muhammad also told that Ismil had implicated him or that his was only a housebreaking or robbery charge? Was he told his fingerprints had been found on the deceased's purse? Did SI Noorma'at also take a photograph of him and say what was alleged? I did not think so and, in any event, these allegations were not the crux of his challenge.

292 Was Muhammad clothed only in his underwear throughout the interview except when his photograph was taken? I did not think so. This would have meant, as he alleged, that when he was brought to the toilet before the lunch break, he was clad only in his underwear.

293 Although the toilet was a short distance away from room B, he still had to walk through part of SIS' office to reach it and other staff, or even visitors to SIS, might have seen him clad only in his underwear. I did not think that his interviewers would have wanted that.

294 In my view, he was asked to remove his clothes as SSI Mazlan described it, *ie*, first the top which was put back on and then he lowered his jeans which was then pulled up. The incident lasted a short while. Even if this was part of an interview technique to demoralise Muhammad, it was not his case that if the incident lasted a short while only, as I found it did, it was still a factor in sapping his will.

295 True, the interview lasted for seven hours and 20 minutes up to 6pm of 30 May 2005 but there were breaks in between. True, despite Muhammad's previous brushes with the law, he would still not be comfortable in such circumstances and there would be some stress. His withdrawal from taking Dormicum had also to be factored in. However, I considered whether the totality of the circumstances was oppressive without the assaults (and also without the threats and inducements). I accepted that SSI Mazlan did not believe him when he initially denied involvement in the murder and SSI Mazlan plodded on. However, I was of the view that the totality of the circumstances was not oppressive.

296 There is one other matter I would like to mention. There was at one point a question whether the temperature in room B could be lowered by adjusting a thermostat control in the room. SSI Mazlan and SSSGT Chandra said it could not because of central air-conditioning in the entire office whereas Muhammad said it could. It turned out that Muhammad's evidence was correct. While I do not say that SSI Mazlan or SSSGT Chandra had deliberately lied, they should have been more careful with their evidence. The prosecution also should have been more careful rather than assume that Muhammad was telling a lie. This was a piece of evidence which could and should have been easily verified sooner rather than later. It was only verified near the end of the evidence for the *voir dire* after I made some observations. In any event, the issue turned out to be immaterial. This was because although the defence was insinuating that the temperature was lowered to give Muhammad the cold treatment, this was not put to SSI Mazlan or SSSGT Chandra. Furthermore, although Muhammad had said that the temperature was lowered after he was doused with ice-cold water, I concluded that he was not doused at all.

297 I also concluded that the temperature was not lowered at all. If it was, the SIS officers

present would have felt the cold more than him as he was wearing a sweater that day. It was also not Muhammad's case that the lowering of the temperature, without the assaults, had caused him to volunteer a statement.

298 As for the question as to how Muhammad had come to make the first sketch for SSI Mazlan on 30 May 2005 (pertaining to the layout of the deceased's flat and objects and figures therein, see [226]-[228] above), I concluded that Muhammad did not copy from a sketch drawn by SSI Mazlan. His evidence on this changed first from his having copied from a sketch drawn by SSI Mazlan, to his being familiar with the layout as it was similar to the flat he was residing in, to his having a friend staying at the second floor directly beneath the deceased's flat.

299 As for Muhammad's evidence that SSI Mazlan had also guided him to draw the sketch, the suggestion was that SSI Mazlan wanted to ensure that Muhammad's sketch was an accurate representation of the deceased's flat and the objects therein as well as of the persons found in the flat on 6 May 2005. Yet, one part of Muhammad's sketch was demonstrably wrong. The object at the bottom left of the sketch was supposed to be a sink and a tap but there was no sink and tap at that location. SSI Mazlan would not have allowed him to insert this at the wrong location if SSI Mazlan was telling him both what and where to draw.

300 In my view, Muhammad had drawn the first sketch by himself without being told both what and where to draw. I was also of the view that the second sketch of cupboards and a wallet was drawn by Muhammad himself and without any reference to any photograph. He made the sketches voluntarily.

301 I did not accept Muhammad's evidence that he had maintained his innocence each time before his statement was recorded, but yet, he eventually signed the statement even though it implicated him because of his fear of further assault. There was no initial assault (before 6pm on 30 May 2005) in the first place.

302 I also did not accept that he had maintained his innocence each time. If he had, the recorders or interpreters would have remembered. I also did not believe that, on the one hand, he was not afraid to maintain his innocence but, on the other hand, he was afraid to mention that he had been earlier assaulted.

303 I will now elaborate a bit more on my views in respect of some of the statements subsequent to the one given to SSI Mazlan on 30 May 2005.

304 I did not accept that SSI Ravindra had uttered any threat or inducement to Muhammad (see [236] above). The interpreter had not heard any. I found her and SSI Ravindra to be honest witnesses. As regards whether Muhammad had told Masdiana, "If I say I never do, will all of you believe me?", which I do not believe he did, this was neither here nor there. I did not accept that the content of the entire statement was suggested by SSI Ravindra or that SSI Ravindra was referring to the earlier statement given by Muhammad to SSI Mazlan. While there were similarities between the two statements, there were also differences. I was also of the view that even though Masdiana had used some words to state what Muhammad was describing to her, this did not alter the fact that the substance of the statement was his. If there was any inaccuracy, that was another matter although she said that she had read back the statement to him and he did not object.

305 As regards the statement which Muhammad allegedly gave to the IO on 30 May 2005 regarding the clothing which he and Ismil had worn to the deceased's flat (see [237] above), I found that the responses did come from Muhammad and were not inserted unilaterally by the IO. I also found that

there was no threat or inducement from the IO.

306 As for the cautioned statement given to Inspector Ang on 31 May 2005 (at [245] above), I found Inspector Ang and Iskandar to be honest witnesses too. There was no threat or inducement as alleged by Muhammad.

307 I did not believe that even though Muhammad was fearful of further assault, he was still bold enough to initially refuse to sign on the charge after it had been read to him. Furthermore, I did not accept that Inspector Ang had told Muhammad that the charge would be reduced.

308 Muhammad's allegation that he trusted Inspector Ang but yet did not disclose the assaults or his withdrawal symptoms to Inspector Ang was not credible. The fact that he did not at any time inquire of any one else about a reduction in the charge of murder belied his evidence that Inspector Ang had said that the charge would be reduced.

309 I come now to the three sketches which Muhammad provided to the IO with his statement on 4 June 2005 (see [252] above). In my view, Muhammad had drawn the first sketch of the layout of the deceased's flat and marked the location of various items and persons therein in response to the IO's questions. I did not accept that he had copied from the sketch he had earlier drawn (on 30 May 2005) for SSI Mazlan. There were differences between the two sketches. I need only mention two. First, the figure that he drew in his sketch for SSI Mazlan, to represent the deceased's body, was different from the figure he drew in his sketch for the IO. In the latter, he drew the deceased's figure as lying on her side. Secondly, the circle which he drew to represent the dining table was located in the kitchen in the sketch he drew for SSI Mazlan whereas in the one for the IO, he drew the dining table as being outside of the kitchen (and in the living room area).

310 I also found that he had drawn the other two sketches of a slipper and of a knife in response to the IO's questions in respect of the murder at the deceased's flat. They were not general questions asking him simply to draw a slipper or a knife as Muhammad had suggested.

311 I also did not accept that the IO had promised to reduce the charge or had stared aggressively at Muhammad between 4 to 14 June 2005.

312 In view of my finding on Muhammad's state of mind (see [279] and [280] above) and as I did not find any threat, assault, inducement or oppressive circumstances, I ruled that all the statements of Muhammad which were in issue were admissible.

The Trial

313 After I had ruled on the admissibility of the statements from Ismil and from Muhammad, the prosecution continued to introduce evidence for the main trial, which included the re-introduction of evidence pertaining to the statements.

314 In addition, SSI Zainal acknowledged that the word "slashing" in his handwritten note of what Ismil had told him in the police car (on 7 May 2005, see [41] above) should actually be a reference to a stabbing. Ismil had used the Malay word "tikam" which means "stab". He also said he did not ask Ismil to sign the handwritten note because the note was like an itinerary of the events which occurred and not a statement of Ismil as such.[note: 229]

315 As for the notes which he wrote later in his field diary, SSI Zainal said he would look stupid if he (SSI Zainal) had fabricated what Ismil had told him at JWNPC because Ismil would eventually be

telling a different version to the officer who was to subsequently record a statement from Ismil.

316 ASP Ng and ASP Goh were standing outside the police car while SSI Zainal and Ismil were inside the car on 7 May 2005. ASP Ng had misplaced his field diary since and could not find it. He did not see SSI Zainal write anything down while SSI Zainal was in the car but he was not looking at SSI Zainal and Ismil throughout their interview. He said SSI Zainal had informed him that Ismil had admitted to stabbing the deceased. Thereafter, Ismil was brought to JWNPC. At that location, SSI Zainal told him that Ismil had said that he had gone to the deceased's flat to borrow money, there was an argument and Ismil had stabbed the deceased with a knife.

317 ASP Goh explained that while Ismil was supposed to be brought to Block 185 for further investigation, there were reporters. So, ASP Ng, SSI Zainal, Ismil and he waited at the carpark. He also said that SSI Zainal had told him at the car park that Ismil had admitted stabbing the deceased. Ismil was then brought to JWNPC for SSI Zainal to interview him further. ASP Goh eventually recorded what he was told in his field diary later on the same day upon his return to his office. As he had not brought his field diary to Block 185, he had first made his notes on a piece of paper before writing in his field diary but he had discarded the piece of paper.

318 Dr Syn said that DNA of Mdm Tham and of a person, whose barcode was S014824, was found on the outside of Mdm Tham's purse which had been found lying on the ground floor outside Block 185. He had also found the DNA of Mdm Tham and of S014824 and of an unidentified person on the inside of Mdm Tham's purse. From the evidence for the prosecution, it was not disputed that Muhammad was the person identified with S014824.

319 Mat Hassim Bin Mat Awi was one of the witnesses for the prosecution. He is a friend of Ismil and Muhammad. He said he was held in custody for about 48 hours at PCC and was questioned repeatedly about a murder case. There was no suggestion that he had confessed to being involved in the murder of Mdm Tham.

320 Dr Stephen Phang ("Dr Phang"), a consultant forensic psychiatrist at the Institute of Mental Health ("IMH") had examined Ismil at Changi Prison Complex Medical Centre ("CPCMC") on 15, 17 and 21 June 2005. He concluded that Ismil was not suffering from any abnormality of mind. He said that the three most important side effects of Dormicum are sedation, amnesia and psychomotor impairment. Dormicum could also cause euphoria in that abusers would experience a sense of tranquillity which they describe as a "high" in their parlance.[note: 230] It was very unlikely for a Dormicum abuser like Ismil to be able to remember details before stabbing the deceased and leaving her flat but not what transpired in between.[note: 231] He was of the view that if Ismil was the assailant, he did not suffer from paradoxical rage (arising from the use of Dormicum) because such rage does not occur in isolation. There would be other significant side effects like confusion and psychomotor retardation which Dr Phang did not note from Ismil's statements.

321 Dr G Sathyadevan ("Dr Sathyadevan"), a senior consultant psychiatrist and chief of the Department of Forensic Psychiatry at IMH had examined Muhammad at CPCMC on 17 June, 5 and 12 July 2005. He was of the opinion that Muhammad was not suffering from any abnormality of mind on 6 May 2005[note: 232]. Dr Sathyadevan said that Muhammad did not tell him that he was pressured or harassed to say certain things.[note: 233]

322 According to the IO, when Ismil was brought to the deceased's flat for further investigation on 19 May 2005, Ismil pointed to a brown holder in the kitchen as the location where he took what he (Ismil) referred to as a knife or parang to attack the deceased. As for the bed which Mr Loh was lying

on, Ismil had pointed to a second bed in Mr Loh's bedroom, which was opposite a nursing bed, although Mr Loh was in fact lying on the nursing bed.

323 A floormat outside the kitchen had a footwear print but the footwear which made the print was not found.[note: 234]

324 The IO confirmed that Mr Loh was brought to the National University Hospital ("NUH") on 6 May 2005 and interviewed by SSI Lai. The IO learned from SSI Lai that Mr Loh was very traumatised but, with the assistance of a relative of Mr Loh, it was learned that Mr Loh said he saw a male person entering the deceased's flat while the deceased was chasing wild cats outside the main door of her flat. The male person was wearing a cap.

325 The Singapore Police Force issued a media release at about 3.30am of 7 May 2005. The second and third paragraphs stated:

> On 6 May 2005 at abut 7.50 pm, Police received a call from the deceased's daughter, informing that she was unable to get any response from her parents' house. Upon arrival, police forced open the main door and found the deceased lying dead on the floor of the living room on her right side, fully clothed, in a pool of blood. She appeared to have suffered slash wounds on her head, hands and back. Her bedridden husband was lying in bed in his bedroom at that time.
>
> It is believed that a tanned-complexion male subject wearing a cap had entered into the house earlier on the same morning. The deceased's husband heard some commotion in the living room from his bedroom but was unable to move or call for help. Preliminary investigation revealed that there were signs of ransack in the house. A chopper and a knife blade, both found in the house, were believed to have been used in the attack.

326 The IO said that Mr Loh was brought from NUH to PCC to attend an identification parade on 13 May 2005 at about 11.15pm. Mr Loh was asked to identify the person he had seen entering the deceased's flat on 6 May 2005. He identified not one but three male persons: Saini, Bobby Iskandar and Jasri Bin Mansor.[note: 235] Ismil and Muhammad were not identified even though they were in the line-up.

327 On 5 September 2005, the IO recorded a statement from Mr Loh. The material parts of the statement read:

> 3 On that day at about 8.10 am, I saw my wife opened the door and gate to chase away wild cats outside our house. At that moment, I was lying on the bed in the bedroom nearer to the kitchen. There was a clock hung on the wall in front of me. From where I was, I could see portion of the living room practically the main door and the living room near altar. I look back and could see what my wife was doing.
>
> 4 There was nobody outside the house when my wife went to chase the cats. 2 minutes after my wife was outside the house, I saw a thief came into my house. The thief is a man. He was wearing a brown cap and a dark red shirt. (recorder's note: witness was showed a colour chart to identify the colour of the cap and shirt wore by the thieft, [*sic*] he pointed no. 6 for the cap and no. 2 for the shirt). He was wearing a long pant and I did not know the colour of his pant. I did not see my wife came [*sic*] into the house when the thief came into my house. The thief went to the kitchen and I heard my wife shouted [*sic*] for help twice in Cantonese. Her voice was coming from the kitchen near the refrigerator in the living room. I then heard the theft [*sic*] shouted "*shut up*" twice in English. Following that, I heard loud "bung, bung" sound. I did not know where

it came from. Simultaneously, I heard my wife shouted for help in Cantonese twice. I could not see what had happened as my view was blocked by a wall.

5 I looked at the clock and noticed that it was 8.20 am. Next, the thief came into my bedroom and squeezed my neck hardly [*sic*] using his hand for 5 minutes. I felt a bit dizzy when my neck was being squeezed. When he let go of his hand, he placed a knife on my throat which is meant for chopping chicken. He did not harm me with the knife but merely threatened me. At that moment, I looked at the ceiling and did not pay attention to the clock. I did not know how long he placed the knife on my neck. The thief did not utter any words. At times, I looked at the thief and noticed that he is a Malay and had a tanned complexion. He was still wearing the same cap. He is slim built (recorder's: witness pointed to the interpreter's built and asked interpreter to stand up, he mentioned that the thief was having the same height as the interpreter which was 1.55 m). After the thief removed the knife from my neck, he pulled away my feeding tube that was inserted into my nose. Next, he left my bedroom.

6 After the thief my bedroom [*sic*], I heard someone pulling the drawers in the other bedroom. I did not hear my wife's voices [*sic*]. I looked at the clocked [*sic*] again and noticed that the time was 8.25 am. Next, I looked at the living room and noticed the same thief opened the main door and left the house. He closed the door before he left the house. After the thief left, I did not see my wife. She is died [*sic*]. I could not do anything and was lying on the bed. I was sacred [*sic*] and having headache. After the theft [*sic*] left, nobody came into my house.

7 At about 4.00 pm, I heard the nurse knocking and calling for my wife outside the house. I remained lying on the bed and could not do anything. I also heard the telephone rung [*sic*] in the living room. The nurse could not enter the house and she left shortly.

8 After the sky turned dark, I heard my daughter knocking and calling for my wife outside the house. A while later, the police banged open the door and rescued me. I was then conveyed to the hospital.

The following questions were posed to the witness:

Q1: Prior to the incident, did you see the thief before?

A1: Yes, I did.

Q2: With regards to your answer in A1, when was the first time you saw the thief?

A2: On 3 May 2005. (recorder's note: witness was showed the May 2005 calendar and he pointed to 2 May 2005). At that time, my wife was paying money to the nurse for her service.

Q3: Where did you see him?

A3: Outside my house. He came with male Malay. He brought along a bowl of curry for my wife. My wife did not accept his offer. They then left.

Q4: With regards to your answer in A1, what time did the male Malay came to your house?

A4: 11 am.

Q5: Did the male Malay wear any cap?

A5: Both of them wore caps. One of them is taller than the other one. The short one wore the same cap that he wore on 6 May 2005.

Q6: On 6 May 2005 that was on the day of the incident, you saw the short person or the tall person?

A6: The short one.

328 Dr Francis Ngui is a practising consultant psychiatrist and a visiting consultant psychogeriatrician to the Lions Nursing Home. He had examined Mr Loh between 13 June 2005 and 9 January 2006. He was of the view that as at 5 September 2005, Mr Loh was able to give some information but he considered Mr Loh unfit to give evidence as at 13 December 2005.[note: 236] Mr Loh passed away on 15 October 2006, having succumbed to cancer.

329 Ismil and Muhammad elected to give evidence but Muhammad elected to give evidence first. This resulted in a significant and dramatic twist to the case as Muhammad proceeded to take sole responsibility for the robbery and murder of Mdm Tham and stated that Ismil was not present at the scene of the crime. The prosecution summarised Muhammad's evidence in the trial at paras 96–108 of its closing submission as follows:

Confession of sole involvement during court testimony

96. Muhammad asserted that he was solely responsible for the robbery and murder of the deceased on 6 May 2005 and exonerated Ismil totally from any involvement. Muhammad testified that at a family gathering at his mother's flat at Blk 185 Boon Lay Avenue #04-154 attended by his siblings held soon after Ismil's arrest (7 May 2005), Muhammad had said that Ismil was "bersih" (clean) and did not know anything about the murder. Subsequently, when Muhammad was arrested and remanded in Queenstown Remand Prison (QRP), he told his sisters (Sabariah binte Kadar and Rosnani binte Kadar) sometime in December 2005 when they visited him that he committed the crime alone. He had also made similar admissions to 2 prison inmates (Mohd Zam and Yusuff bin Ahmad) before the trial commenced in March 2006. Muhammad made his first written admission of sole responsibility for the offence on 19 December 2005, which was before the Preliminary Inquiry (PI), when he saw his previous assigned counsel (Amarick Singh Gill – D2-W3) for the first time and he [Mr Gill] wrote a note. Muhammad also wrote a 4 page confession (D2-1) in QRP about a week before 10 September 2007. Muhammad testified that he wanted to confess in court for his sole responsibility in the offence as he felt guilty and did not want his innocent brother to be punished and he had not admitted earlier as he was afraid of the death sentence. [Notwithstanding] the various statements that Muhammad made to the CID investigators where he described the role played by Ismil in the robbery and killing of the deceased, Muhammad now claims that all these had been false and were concocted by him as he was frightened and since Ismil was already arrested, Muhammad decided to push the blame to Ismil by fabricating Ismil's involvement.

97. Muhammad gave evidence that he went to the deceased' flat on 3 occasions that culminated in him robbing and murdering the deceased on the morning of 6 May 2005 (third

occasion). Prior to the three occasions, he had not spoken to the deceased or her husband but he was under the impression that the deceased knew him as her 4th floor neighbour.

First occasion – end April 2005

98. The first occasion was around end April 2005 at about 6 p.m. when Muhammad was alone [and] had just returned from work and was about to enter his flat on the 4th floor when the deceased called him from the 5th floor stairs landing just outside her flat, to assist her to help lift her bedridden husband from his bed. Muhammad agreed and spent about 5 minutes in the deceased' flat. He had never seen the deceased' husband before and noticed that he was unable to speak. Muhammad addressed him as "uncle". Upon returning home, he did not relate this to Ismil.

Second occasion

99. The second occasion that he went to the deceased' flat was sometime after the first occasion and before 6th May 2005 when Muhammad went with his drug addict friend, "Mamat Jurong", to deliver food to the deceased. According to him, this occurred after Muhammad and "Mamat Jurong" had abused Dormicum together in Muhammad's flat. Muhammad brought some food wrapped in plastic and deliver [sic] it to the deceased because he felt pity for the old man that he saw on the first occasion. Muhammad clearly recalled that the deceased accepted the food and that he did not enter the flat. He could, however, see the deceased' husband when he stood outside the flat. Again, Muhammad did not tell Ismil about this incident.

Third occasion – 6 May 2005

100. The third occasion Muhammad went to the deceased' flat was on the morning of 6 May 2005 when he decided to rob the deceased as he was short of money to buy drugs. Although Muhammad was unaware of Ismil's financial state on 6 May 2005 at the time, he acknowledged that Ismil was not working then. Muhammad admitted that he had planned to rob the deceased by himself a few days before 6 May 2005 but did not mention this to Ismil as he wanted [to] commit the offence alone. Muhammad did not have a specific plan for the robbery but he targeted the deceased' corner flat as he felt that few people pass by it. Muhammad also acknowledged that he was prepared to confront the deceased and use force on her if she refused to give him money.

101. On 6 May 2005, Muhammad woke up about 8 a.m. and noticed that Ismil was still asleep in the same bedroom. He claimed that he went to the toilet to consume Dormicum intravenously as he did not want to share the drug with Ismil. After consuming Dormicum, at which point, Ismil was still sleeping in the bedroom, and proceeded to the deceased' flat on the 5th floor. He knocked on the door a few times and when the deceased opened the door, he used "hand signals" to tell her that he wanted to see "uncle" and she let him in and closed the front door. Muhammad went straight to the bedroom where Loh was lying on the bed and stood by Loh's bed for a very short while before proceeding to the kitchen. Thereat, he signalled the deceased to come to the kitchen and took a knife from a knife holder (photo P 15). When the deceased was right in front of him, he immediately thrusted [sic] the knife 3 times towards the front of her body. The deceased ran towards the toilet and he followed her there and stabbed her again in the toilet until the knife handle broke. Muhammad did not ask the deceased to "shut up" but she groaned as a result of her injuries. When the knife handle broke, Muhammad took a chopper from the knife holder and returned to the toilet to inflict more injuries on the deceased. He used the chopper at

the deceased' head as she was then crouching on the toilet floor, until she collapsed. Muhammad did not think that the deceased was dead yet as her hand was still moving but he thought that [she] was going to die from the injuries which he inflicted. After he attacked the deceased with the chopper, Muhammad picked up the knife handle from the toilet and threw this into the rubbish chute of the deceased' flat.

102. Muhammad then went into Loh's bedroom whilst holding the chopper in his hand. He removed Loh's feeding tube and threatened Loh by putting his left finger on his lip whilst holding the chopper with his right hand. Muhammad categorically denied that he placed the chopper at Loh's neck and also that he squeezed Loh's neck for 5 minutes. Muhammad spent only a short time in Loh's bedroom before he went to ransack the first room (near the main door) where he found a black purse containing $15 in a cupboard in the first room and he kept it. When he came out of this room, he saw the deceased at the kitchen area approaching him and he took the chopper (P186) and went to inflict more injuries on the deceased until she collapsed. Muhammad left the chopper on a shelf (as can be seen in Placard 4 in Photo P24).

103. In the course of attacking the deceased with the chopper, Muhammad realised there was blood at the kitchen area and he put on a pair of brown "slip on" shoes (belonging to Loh) which he found in a shoe rack behind the main door so as to avoid getting his bare feet bloodied. During the time that he was in the deceased' flat, he also washed his hands and feet in the shower room (next to the toilet) and threw buckets of water at the kitchen area to wash away the blood stains on the floor. He also used a cloth to wipe the chopper and cupboard which he ransacked as well as the tap (Photos P18 and P21) before leaving the deceased' flat and closing the door and metal gate. Muhammad wore his slippers and went upstairs to dispose of Loh's brown shoes between the 8th and 9th floor stairs landing. He then returned to his flat on the 4th floor, took out the $15 from the black purse he stole from the deceased' flat earlier and threw the empty black purse down to the 1st floor. Muhammad estimated that he spent about an hour in the deceased' flat. During the period that Muhammad was in the deceased' flat, he attacked the deceased with a knife and a chopper during three distinct episodes, firstly in the kitchen with the knife blade which continued to the toilet until the knife handle broke, secondly, when he took the chopper and attacked her in the toilet until she collapsed and thirdly, when he attacked her in the kitchen area (near the refrigerator) when he came out of the 1st room and saw her approaching him from the kitchen.

104. Muhammad entered his flat and headed to the kitchen where he soaked his clothes (T-shirt, Bermudas and blue jacket) in a pail of water with detergent. When he went to his bedroom, he met Ismil and they abused Dormicum together. Muhammad claimed that he cannot recall whether Ismil was still sleeping when he entered the bedroom after returning from the deceased' flat. Muhammad maintained that he did not tell Ismil anything about what he had done earlier that morning when he went to the deceased' flat.

105. The events after Muhammad returned from the deceased' flat are not particularly significant for the purposes of the case before this Honourable Court as he had spent the rest of the day with his brothers, Hathinin and Muhammad and friends, Saini and Mat Hassim, abusing and buying drugs. Muhammad confirmed that no one else knew about the murder and robbery and Mat Hassim arrived at their flat after he had returned from the deceased' flat.

Clothes worn on 6 May 2005

106. When Muhammad went to the deceased' flat on the morning of 6 May 2005, he claimed that

he wore a beige T-shirt (P245), a pair of Bermuda shorts (P244), a maroon cap (P239 and photo P113), a dark blue jacket and a pair of slippers. During scene investigations, Muhammad had only identified to SI Raymond Tan the beige T-shorts and the Bermuda shorts which he wore to the deceased' flat. He lied to SI Raymond Tan that the slippers had been stolen and there was no mention of the blue jacket. By the time P244 and P245 had been seized on 30 May 2005, Muhammad had already washed P244 and P245. The dark blue jacket was not seized.

107. During his court testimony, Muhammad contended that when he learnt about Ismil's arrest for murder of the deceased on 8 May 2005, he knew that the police had arrested the wrong person but he was afraid of turning himself in. He made a complete denial when he was questioned by the CID officers on 13 May 2005 and on 30 May 2005 until SSI Mazlan confronted him with the DNA evidence on the deceased's black purse. Muhammad acknowledged that as at 30 May 2005, had the police not found his DNA on the black purse, he was prepared to let Ismil face the murder charge.

Muhammad's statements to the CID officers

108. When Muhammad admitted to the CID officers on 30 May 2005 and subsequently, fabricated a minimal role for himself that involved only ransacking the deceased's flat, he did so partly because he was afraid and partly due to suggestions by the CID officers. Muhammad agreed that most of these statements (in particular the account of what Ismil did to the accused in the deceased' flat and Ismil's participation and presence in the deceased' flat) were concocted by him rather than being the result of active suggestions from the CID officers.

330 I had given my decision on the admissibility of the statements from Ismil and from Muhammad on 26 February 2007. Mr B J Lean ("Mr Lean") was the lead counsel and Mr Amarick Singh Gill ("Mr Gill") was the assisting counsel representing Muhammad up to 20 March 2007 when they were granted leave to be discharged as Muhammad's counsel. Mr Ismail Hamid and Mr Rajan Supramaniam were the replacement counsel for Muhammad when the trial resumed on 10 September 2007.

331 Mr Gill confirmed the handwritten notes he wrote when he visited Muhammad at QRP in the morning of 19 December 2005. This was the admission described in para 96 of the prosecution's closing submission as Muhammad's "first written admission." The notes stated:

How are you?

1. I feel guilty about this case. My brother did not involve in this case. The person who do it is me. I have been thinking why in the first place he admit the case. He was not there.

2. My brother was not there. He wasn't in the flat and he was not with me. I was alone.

3. I was thinking why my brother admit this case.

332 I should mention that although the prosecution submitted that Muhammad's evidence was that he saw Mr Gill for the first time on 19 December 2005, Mr Lean's evidence suggested that that was not the first time that Muhammad's counsel had seen Muhammad. According to Mr Lean, they (*ie*, he and Mr Gill) had seen Muhammad before 19 December 2005 and went through the various documents in the PIB (see [27] above) with Muhammad.[note: 237] I will refer to the preliminary inquiry as "PI".

333 Mr Lean's evidence was that 19 December 2005 was three days before the PI which was on 22 December 2005. He had learned from Mr Gill what Muhammad had said on 19 December 2005 but

he was not certain whether Muhammad was telling the truth about his sole involvement. In view of the tight timeframe, he decided that they go ahead with the PI first.

334 The first position taken by Muhammad was the one on 19 December 2005, *ie*, that he was solely responsible for the robbery and murder.[note: 238]

335 After the PI, Mr Lean and Mr Gill continued to spend a long time with Muhammad on the statements he had given to CID and at some point, Muhammad confirmed that his statements were correct.[note: 239] Consequently, Mr Lean sent a letter of representation to the Attorney-General's Chambers ("AGC") dated 17 February 2006 to ask for the charge against Muhammad to be reduced to housebreaking or robbery.[note: 240]

336 Mr Lean added that after the trial commenced (on 20 March 2006), another statement of Muhammad which was recorded on 13 May 2005 was made available to the defence. Mr Lean then discussed that statement with Muhammad, the contents of which appeared to be different from his other statements (which were the subject of the *voir dire*). In the 13 May 2005 statement, Muhammad had explained what he was doing on 6 May 2005 and where he was and who he was with. Muhammad told Mr Lean that no one believed him. Mr Lean advised him that that statement contained his alibi and was instructed to give a notice of alibi.

337 Accordingly, a notice of alibi dated 11 July 2006 was issued by Mr Lean to AGC. The portion of the letter which dealt with the substance of the alibi stated:

> The alibi relied on is essentially as reflected as per the contents of our client's statement that was recorded by SSSgt Noorma'at Sawab on the 13th May 2005 at 1.12pm. We are further instructed that our client awoke at about 8.30am on the 6th May 2005 and was at home until 10am when he left for the Boon Lay Shopping Centre with the 1st Accused Ismial [*sic*] Bin Kadar and Mat Hashim Bin Mat Awi. The trio returned at about 11am to our client's flat.
>
> Our client has stated that he left with Sani and Hashim for the Jurong Point Shopping Center at "*about 11am plus*". Our client has clarified that this timing is inaccurate and has instructed us that they left sometime later. With reference to the EZ Link records of Sani Bin Mansor that your good office furnished to us by way of your letter dated 5th June 2006, we have noted that Sani boarded the bus at 12.49.59 on the 6th May 2005. Our client has instructed that they must have left his home some time before 12.49.59. He is unable to remember the exact time. Moreover, with reference to the said EZ Link records, our client has clarified that they boarded bus number 174 and not 240 as he has stated in his statement. Our client confirms that they indeed returned back to Blk 185 soon after 2pm.
>
> Essentially, our client's instructions as regards to his alibi is that he was, from the time he awoke at about 8.30am on the 6th May 2006 to 2pm and thereafter even up to about 4.30pm when he returned home, in the company of other persons ie: his alibi witnesses namely: Sani, Hashim, his mother and his brother Hathinin Bin Kadar.

338 Mr Lean added that after the *voir dire* for both the accused persons, Mr P O Ram who was the lead counsel for Ismil was visibly upset one day and told him that Ismil was maintaining his innocence. With Mr Ram's consent, Mr Lean spoke to Ismil who was in the dock. Ismil told him that Muhammad had told their siblings about Ismil's innocence. Mr Lean then spoke to Muhammad who told Mr Lean that he did inform his siblings about Ismil's innocence. Later on, Mr Lean and Mr Gill met up with

Muhammad in the lock-up and Muhammad said he was solely involved in the offence. Muhammad wanted Mr Lean to carry on with his defence including the defence of alibi, but Mr Lean was of the view that they could not carry on as his counsel. Thereafter, he and Mr Gill applied for their discharge which I granted, as I have mentioned, but at that time the details were not furnished to the court. Mr Lean denied that Muhammad's second admission, that he alone was involved, had come about because he had advised that the accused persons were both going to lose their case.

339 I should mention that neither Mr Lean nor Mr Gill gave any evidence at the *voir dire* for Muhammad's statements. At the trial, there was also no suggestion from either of them that Muhammad had complained of any ill-treatment or inducement.

340 Dr Calvin Fones Soon Leng ("Dr Fones") was the defence psychiatrist for Muhammad. He saw Muhammad on 29 October 2007 and 28 November 2007.

341 Muhammad had claimed that the account he gave to Dr Fones was the accurate one. Muhammad denied having physical withdrawal symptoms after taking Dormicum. At about 8.30am of 6 May 2005, Muhammad had taken two tablets of Dormicum intravenously. He felt brave and decided to rob the Chinese lady on the fifth floor of his block whom he had met previously when she asked him for help to lift her bedridden husband. Muhammad had thereafter given her some curry a few days before 6 May 2005.

342 When he arrived at the deceased's flat, she recognised him and let him in as she thought that he wanted to talk to Mr Loh. He eventually proceeded to the kitchen to take a knife as the thought occurred to him that if he were to rob her, she would identify him. Muhammad took a knife from the kitchen and plunged it into her intending to injure or kill her. He could not remember how many times he had attacked her but was shocked at the number of wounds revealed in the autopsy report.

343 The rest of Dr Fones' report contained Muhammad's elaboration of what he did in the bedroom where Mr Loh was lying, how he attacked the deceased with a chopper, his ransacking of the next bedroom and his attacking the deceased another time with the chopper as well as elaboration of Muhammad having wiped the door handles, washing blood-stained footprints and disposing of a pair of shoes he had worn in the deceased's flat.

344 Dr Fones' written opinion was as follows:

> **PSYCHIATRIC OPINION**
>
> 1. MK was NOT of unsound mind during the alleged offence. He was aware of his actions during the time of the alleged offence and knew that what he was doing was wrong.
>
> 2. MK is fit to advise counsel and is fit to plea.
>
> 3. MK was however, clearly under the influence of drugs during the time of the alleged offence. He formed the intention to rob and kill the woman shortly after or during the time he had consumed intravenous Dormicum; as he puts it 'it made him feel brave when under influence'. It is likely that his intention to kill was formed while under the influence of Dormicum that he had taken. The disinhibitory effects of the drug also contributed to the nature of the crime where he slashed the woman repeatedly without a clear recollection of how many times he had done so. Indeed he remarked that he was 'shocked' when told later how many times he had allegedly slashed the woman. The effects of the drug had likely led to a major reduction in self-control and regulation of his own actions.

4. It is thus conceivable that MK was suffering from such abnormality of mind at the time of the offence, due to the effects of Dormicum, in that it substantially impaired his responsibility for his actions in causing the death of his victim. He had earlier formed the intention to harm the woman while under the influence of Dormicum, and the effects of the drug on his mental state further affected the extent of his actions at the material time.

345 Dr Fones agreed that Muhammad did not suffer from paradoxical rage when he attacked the deceased[note: 241] but was of the view that Dormicum had affected Muhammad partly because of the nature and extent of the injuries inflicted on the deceased and partly because Muhammad could not recollect the extent to which he had attacked the deceased.[note: 242]

346 In oral evidence, Dr Fones said that by "conceivable" in para 4 of his report, he meant that it was likely that Muhammad was suffering from an abnormality of mind.[note: 243] His drug dependency was the psychiatric disorder.[note: 244]

347 Dr Sathyadevan was then recalled to rebut Dr Fones' evidence. He had re-examined Muhammad on 17 and 29 January 2008 and produced a report dated 13 February 2008. In Dr Sathyadevan's opinion, being high on Dormicum does not amount to an abnormality of mind unless there are psychiatric complications such as paradoxical rage or confusion. Muhammad's actions had to be consistent with abnormality of the mind. While Dormicum gave Muhammad boldness, he was in control of his mental faculties and actions.[note: 245] He did not suffer from an abnormality of mind. Dr Sathyadevan was also of the view that there was no substantial impairment of Muhammad's judgment.[note: 246]

348 Ismil then proceeded to give his evidence. The main thrust of his evidence was that he was not at the scene of the crime which was contrary to what he had said in the statements which were in issue.

349 Ismil's highest level of education was primary six which he attended but did not pass. He was in the Malay stream and had difficulty in reading and writing English. He could speak simple English like "I am not feeling well", "I am tired" and could use words like "shackled".[note: 247] He left school at 15 years of age and started to consume drugs at the age of 17. He had been detained in DRC six times (or five times according to his evidence in the *voir dire*, see [29] above). At the time of his arrest on 6 May 2005, he was consuming Subutex, Dormi and Dormicum and was doing jobs on an *ad hoc* basis.

350 He said that when he woke up in the morning of 6 May 2005, he did not see his mother or Muhammad. He was alone at home. He consumed six tablets of Dormicum orally. He found a needle and ground two tablets of Dormicum. Someone then came back into #04-154. Muhammad appeared at the door of his bedroom. He invited Muhammad to join him in consuming Dormicum and they injected themselves with Dormicum. He gave Muhammad $15 to purchase Dormicum. They rested. A friend, Mohammed Hashim, then arrived and consumed Dormicum intravenously. Thereafter, all three went to BLSC in the morning of 6 May 2005. They then returned to #04-154 and met his mother and Saini. Later, his elder brother, Hathinin also came to #04-154. Thereafter, he and Hathinin left for BLSC to steal handphones. After stealing two handphones, they returned to Block 185 and joined Muhammad, Saini and Hathinin at Saini's girlfriend's flat on the 9th floor of Block 185. They consumed drugs in that flat and then he (Ismil) returned to #04-154. Subsequently, he tried to sell the handphones at BLSC and was caught. I need not repeat the circumstances as to how he came to be caught.

351 Ismil confirmed he was interviewed by two CID officers in the morning of 7 May 2005 at Jurong

Police Division Headquarters lock-up about a murder which took place at Block 185. He told them that he did not know anything about a murder.

352 Later in the same morning, he was interviewed by SSI Zainal in a police car at the car park at Block 185. SSI Zainal told him that an old lady was murdered and there was a sickly old man in the deceased's flat.[note: 248] However, SSI Zainal did not tell him how the deceased was murdered or that the old man was bedridden.[note: 249] SSI Zainal told him that his fingerprints were found at the deceased's flat and he replied in Malay: "If it's there, it's there, so be it". He did not see SSI Zainal write anything down.[note: 250] He did not tell SSI Zainal that he had slashed or stabbed an old female Chinese. He was then brought to JWNPC. However, he could not remember whether he was interviewed again by SSI Zainal or what he said to SSI Zainal then.[note: 251] The first person to whom he had admitted committing the murder was ASP Bakar although he was not sure.[note: 252] He said CID did not tell him that a chopper was used in the murder but he could not remember whether he was told a knife had been used.[note: 253]

353 Ismil's evidence was that his various subsequent statements which were disputed in the *voir dire* were partly true and partly untrue. Insofar as the contents were untrue this was because he had fabricated them from suggestions or information from CID officers or he had fabricated them on his own. He was not able to say which untrue parts were from suggestions or information from CID and which were concocted by him.

354 Basically, his position was that all the information he had given in the statements regarding his involvement in the crime was untrue and information as to how he woke up on 6 May 2005 and saw Muhammad was also untrue. He had simply said whatever he thought the CID wanted him to say.[note: 254] At one time, he said he told "everyone" that he was not involved but he was not believed. So, he waited till he was in court to tell the truth.[note: 255]

355 As regards para 14 of his statement of 17 May 2005 (see [77] above), he agreed that he did inform Sapiahtun and the IO that he had made an admission to the Malay officer (meaning SSI Zainal) that he had stabbed a Chinese neighbour but he said he did so because he was merely following suggestions by the IO.[note: 256]

356 Ismil's evidence was that prior to 6 May 2005, he did not know anything about the deceased or her husband. Neither did Muhammad tell him anything about the robbery or the murder.[note: 257]

357 As for question 32 of Ismil's statement of 18 May 2005 (see [81] above), it had asked Ismil what made him confess to the Malay CID officer. Ismil's answer 32 was that he was told that his fingerprint was found at the deceased's flat and upon hearing that, he realised that CID knew that he had stabbed the deceased. In oral evidence, Ismil did not deny that he provided Answer 32. His explanation was that he just said what came to his mind (on 18 May 2005) as he wanted to get over the taking of the statement and relax.[note: 258]

358 As for the bed which Ismil pointed to during a crime scene visit on 19 May 2005, he confirmed that he had pointed to the wooden bed, opposite the nursing bed in the same bedroom, as the bed which Mr Loh was lying on.[note: 259]

359 As for Ismil's statement of 3 June 2005 to ASP Bakar, Ismil maintained that this statement was provided after SSI Mazlan told him to save his younger brother.

360 Ismil acknowledged that during his interview by Dr Phang, he had also admitted to the murder of the deceased but he claimed that that was a lie. When asked why he lied, he said he just lied.[note: 260]

361 Ismil said that two of his elder sisters, Sabariah and Rosnani had visited him at QRP but he was not sure if they had told him anything about the murder case.[note: 261]

362 Ismil recalled that he had communicated with two inmates in QRP about his murder case. They were Yusuff Bin Ahmad and Mohammad Zam Bin Abdul Rashid. He had referred to them as "Yusuff" and "Wahab". I will do likewise. Wahab was his cell-mate. In examination-in-chief, Ismil said he could not recall his conversation with Yusuff or Wahab.[note: 262] In cross-examination, he said he had heard from both Yusuff and Wahab that Muhammad was the sole participant in the murder.[note: 263] However, Ismil could not say who was the first person who disclosed this news to him even though he was shocked upon receiving such information.[note: 264]

363 Ismil had also spoken to one Mohd Isa bin Ibrahim ("Isa") in QRP. According to Ismil, this person was the "Mamat Jurong" whom Muhammad had mentioned as the one accompanying him when he had brought food to the deceased's flat a few days before 6 May 2005. I will also refer to this person as "Mamat Jurong." Ismil said he had met Mamat Jurong once, before his (Ismil's) arrest when Isa was with Muhammad.[note: 265] Although he did not know that Isa was known as Mamat Jurong, he realised that Isa was the Mamat Jurong whom Muhammad had been referring to in the trial, when he met Isa in the same cell in QRP in 2008. Mamat Jurong had been staying in Jurong.[note: 266] Ismil then said that actually Mamat Jurong was an old acquaintance of his. He had known him since a long time ago but had not met him for a long time.[note: 267] Ismil was uncertain how he had come to know him. Perhaps a mutual friend had introduced them.

364 Ismil was uncertain whether he spoke to Mamat Jurong about his murder case on the first day when they met at QRP.[note: 268] He said that he did not ask Mamat Jurong whether he had accompanied Muhammad to the deceased's flat and he only told Mamat Jurong to tell the truth if his counsel should interview him. He could not remember the response to his request but he remembered that Mamat Jurong did not specifically confirm that he had gone to the deceased's flat a few days before the murder. Ismil did not discuss the case with him and neither did he ask Ismil what he was talking about when Ismil requested him to tell the truth should Ismil's counsel interview him.[note: 269]

365 I would add that the prosecution had also provided Ismil with Malay translations of the statements (which he had disputed). However, near the end of his cros-examination, Ismil said that although he could read all the translated statements, he did not understand about half of them as some sentences were lengthy.[note: 270]

366 By a letter issued on 3 January 2006 (which was wrongly dated as 3 January 2005), Tan Lian Ker & Co had sent a notice of alibi on behalf of Ismil. The relevant parts stated:

> We shall be relying on the prosecution witnesses as listed in your list of witnesses i.e.
>
> a) witness no. 5
>
> b) witness no. 6

c) witness no. 11

d) witness no. 12

e) witness no. 13

f) witness no. 41

g) witness no. 42

Besides these witnesses, we have to interview the Accused's mother and his brother. We also need to obtain information from Singtel subject to your providing us the telephone number requested earlier.

We believe that you have interviewed the Accused's mother and brother and have recorded their statements accordingly. We shall be obliged if you could let us have his brother's address and contact number.

We shall provide the names of the other witnesses after interviewing them and obtaining the information from Singtel or Telecoms.

367 Wahab also gave evidence for Ismil. He confirmed that his nickname is Wahab. He had come to know Muhammad when they shared a cell at QRP in 2005. He had come to know Ismil when they shared a cell at QRP in 2006. Wahab said Muhammad had told him (in 2005) in the presence of two other cell mates that he alone had murdered the deceased. Muhammad had also told most of the other inmates in QRP that he was solely responsible.[note: 271] Wahab told Ismil what he had heard from Muhammad. Ismil was not shocked when he heard the news. However, Ismil informed him that he was shocked, when he looked at the photographs of the deceased, to learn that it was Muhammad who had killed her.[note: 272]

368 Yusuff said he had met Muhammad when they were both at Reformative Training Centre ("RTC") in the 1990s. Yusuff was last held in QRP between December 2005 to December 2007. He met Ismil in a cell and he met Muhammad when they were both waiting in a queue for a visit by family members. They spoke. Muhammad mentioned his murder case. Yusuff said he had heard that two people were involved in the case and Muhammad said his elder brother was involved but it was he (Muhammad) who committed the murder and he had gone to the deceased's flat alone. He had taken drugs and was high to such an extent that he had lost control of his actions.[note: 273] Muhammad also told him that he had disclosed his sole involvement to his lawyers but was advised to deal with his own case and to let Ismil deal with his own.[note: 274] Later, after Yusuff had met his visitor, he returned to the yard and met Ismil. He discussed his conversation with Muhammad and learned then that Muhammad and Ismil were brothers. Ismil was shocked to learn that Muhammad was the one responsible for the murder and angry that Muhammad had not mentioned this earlier.[note: 275]

369 Ahmad Habibullah Safari Bin Haron ("Habibullah") also gave evidence for Ismil. He was sharing a cell with Ismil at QRP in August 2005. Later, he shared a cell with Muhammad. About two weeks later, he asked Muhammad why he was looking sad. Muhammad mentioned the murder case and eventually Habibullah asked Muhammad who actually committed the murder. Several days later, Muhammad said that it was he and he was not himself when he committed the murder. Ismil was not present. As to whether Muhammad had told Habibullah that Ismil was not present, Habibullah at first said this was mentioned and then said it was not mentioned.[note: 276] Subsequently, Habibullah's path crossed

Ismil's but Habibullah did not mention what he had learned from Muhammad. Habibullah did not hear from other inmates about Muhammad's sole involvement in the murder.

370 Habibullah said he did read the PIB when he was sharing a cell with Muhammad. He knew that Muhammad had given statements incriminating Ismil but he did not query Muhammad why such statements were given if Muhammad was the only person involved.[note: 277]

371 Mamat Jurong also gave evidence. He is a Chinese. He had slept occasionally at the residence of a distant relative on the 12th floor of Block 185 since he was 10 or 12 to 20 years old although his primary residence was at Taman Jurong. That was how he got to know Ismil and Muhammad. He was sharing the same cell with Ismil in December 2007 for about three days. By then, he had already learned from the newspapers that Ismil had been charged with murder. On the first day, there was general discussion as to how Ismil's case was coming along and they chit-chatted. Ismil played games like English chess. On the second day, Ismil asked him to recall whether he was around Boon Lay at the time of the murder and to inform him that his (Ismil's) lawyer was likely to interview him. Mamat Jurong agreed although he did not know specifically why his assistance was sought and he did not ask why.[note: 278]

372 Mamat Jurong mentioned an occasion in 2005 when he was with Muhammad at #04-154 taking drugs. Muhammad then asked Mamat Jurong to accompany him to bring food to a neighbour. Mamat Jurong went along although he could not remember whether they took a flight of stairs up or down from the fourth floor.

373 Muhammad called out "Auntie" and an old Chinese lady came out. He told her in Malay that he had some food for her. They talked a bit and she asked him to go in. Muhammad did so while Mamat Jurong stayed outside. After a few minutes, Muhammad emerged. That was the only occasion he had accompanied Muhammad to bring food to a neighbour.

374 After Ismil had sought Mamat Jurong's help, Ismil's counsel sought to interview him. He then decided to decline the request the first two times as he did not want to get involved. By then, he was no longer sharing the same cell with Ismil. However, he changed his mind and acceded to the third request as he had not done anything wrong and had nothing to lose.

375 Mamat Jurong did not think Ismil could be easily bullied.[note: 279]

376 One Jumadi Bin Buadi ("Jumadi") also gave evidence primarily to identify Isa as Mamat Jurong. Mamat Jurong said Jumadi was closer to Ismil than he was. Jumadi considered Ismil to be quite intelligent in that Ismil was a responsible worker and he said Ismil was not easily intimidated.[note: 280]

377 Sabariah, a sister of the two accused persons, said that the family did gather on one occasion at #04-154 to discuss the murder case. Muhammad was present and said Ismil was innocent.

378 Subsequently, she and Rosnani, another sister, visited Muhammad at QRP after Muhammad was arrested. This was apparently in 2005 (as verified from QRP records). She told him if he had committed the murder, he should confess and not blame others, meaning Ismil. Muhammad admitted that he alone had committed the murder.[note: 281] She scolded Muhammad because this was a murder case and he had dragged Ismil into it. However, there was no discussion about how Ismil could be saved. When she met Ismil at QRP subsequently (which was apparently on the same day according to QRP records), Ismil told her that he was innocent but she could not remember whether she told him what she had learned from Muhammad[note: 282]. Thereafter, she did not approach anyone, including

the lawyers for Ismil or Muhammad, with the information she had received.[note: 283]

379 Rosnani also said that Muhammad had said Ismil was not in the wrong when Ismil's arrest for murder was discussed at a family gathering at #04-154. She said that when she visited Muhammad at QRP with Sabariah, apparently in December 2005. Muhammad said that he alone was involved in the murder. He asked her to tell Ismil not to admit to the charge as Ismil did not commit the murder. Subsequently, when she met Ismil on the same day, also at QRP, she told Ismil not to admit to the charge but she did not tell Ismil that Muhammad had admitted that he alone was solely responsible for the murder because she did not witness the murder.[note: 284] Ismil kept quiet and said he was innocent. They talked about other things.[note: 285]

380 Rosnani described Muhammad as a lively person and Ismil as quiet and mentally and academically slow although she had not heard of his being bullied.[note: 286]

381 Dr Harold Peter Robers ("Dr Robers") is a psychologist who conducted an intelligence quotient ("IQ") test known as the Performance Scale IQ of the Wechsler Adult Intelligence Scale, 3rd edition (WAIS-III) and a Comprehensive Test of Nonverbal Intelligence ("CTONI") on Ismil on 22 September 2007. His report dated 24 September 2007 contained the following summary:

> On the WAIS-III, Ismil achieved a Performance Scale IQ of 73, which is in the Borderline range to Mid Mentally Retarded range of scores (95% confidence interval: 68-81). On the CTONI, Ismil achieved a CTONI overall nonverbal IQ of 75. This also places him in the borderline range of intellectual functioning. He achieved a Pictorial IQ score of 70 (Poor/borderline to mentally deficient) and a Geometric IQ score of 83 (Low average).
>
> Both tests indicate that Ismil has mentally deficient skills (Borderline to mild mentally retarded) and while similar individuals function at a higher level than those classified as more severely mentally retarded, their cognitive functioning is nevertheless limited, creating problems for everyday functioning, judgment, and academic or occupational achievement.
>
> From the results of the testing, Ismil has weak reasoning and comprehension skills. This is likely to be reflected in poorer judgment and he is apt to become more suggestible and more easily influenced by others when pressured or coerced. He is likely to be prone to be vulnerable to suggestions and manipulations when he in [*sic*] under stress or threat. Although Ismil can perform and remember concrete tasks and information with some adequacy, he experiences difficulty when he has to deal with information, pictures and material related to common everyday occurrences. He is likely to have significant limitations in processing information that are more abstract or complex in nature.
>
> In view of this information gained through the psychological testing concerning Ismil's cognitive-intellectual functioning, it is recommended that a psychiatric interview is conducted to ascertain specifically how his deficits have affected and influenced his functioning, behaviour and responses.

382 Ismil's IQ score of 73 was accepted by the prosecution. It was consistent with a similar test conducted for the IO by Dr Clare Yeo ("Dr Yeo"), Head and Principal Clinical Psychologist, Department of Psychology, IMH on 24 March 2008. Dr Yeo's report dated 1 April 2008 was admitted by consent as Exhibit D1-7.

383 Dr Ung Eng Khean ("Dr Ung") is a Senior Consultant Psychiatrist and Psychotherapist with Adam

Road Medical Centre. He has a special interest in eating disorders and is not a specialist on substance abuse.[note: 287] He interviewed Ismil on 13 December 2007, 18 February 2008, 4 March 2008 and 18 March 2008. Dr Ung summarised his report as follows:

1. Ismil is a **moderate to severe abuser of Benzodiazepines**.

2. Given this level of abuse, a moderate to severe level of withdrawal is likely to manifest on abrupt cessation of Benzodiazepine consumption.

3. Ismil was suffering from **moderate to severe benzodiazepine withdrawal** at the time of his interrogation.

4. A psychological assessment by Dr Harold Robers revealed that Ismil's performance IQ is 73. This is in the **Borderline to Mild Mentally Retarded range of intellectual functioning**.

5. I fully concur with Dr Rober's opinion that Ismil is apt to **manifest poor judgment** and to **become more suggestible** and **be more easily influenced by others when pressurized or coerced thus being vulnerable to suggestions and manipulations when he is under stress or threat**.

6 . **Drug intoxication and/or withdrawal** and **mental handicap/low intelligence** are prominent factors in Ismil's case that significantly increase the likelihood of a false confession.

7. Because of his withdrawal symptoms, anxiety, low intellect and lack of assertiveness, Ismil was unable to cope with the distress and was preoccupied with alleviating any further distress. There was total preoccupation with the short and immediate term with little regard of the long-term consequences of his action.

8. Other personal factors relevant in Ismil's case that have been implicated in increasing suggestibility thus increasing the likelihood of a false confession are **anxiety, lack of assertiveness and poor memory**.

9. External interrogative factors such as **exaggeration of the evidence** available, the **threatened consequences** to Ismil by 'not signing' and **inducements of leniency** for confession is likely to have added to Ismil's likelihood of false confession.

10. The constellation of these internal and external factors would synergistically interact to magnify the risks of a false confession.

11. Ismil's confession would conform to a **coerced-complaint false confession**. His main motive for doing so was to alleviate and minimize his distress.

12. Ismil's highly selective memory gaps in his statements given to the Police are unlikely to be a consequence of anterograde amnesia related to Benzodiazepine use or withdrawal. These would be consistent that he made up a story based on what information and cues he obtained from the Police. In the absence of such cues and information, he would usually claim that "he could not remember."

13. His behaviour at being confronted after trying to sell the two stolen handphones after the alleged murder is consistent with his assertions of innocence.

14. The presence of **incontrovertible forensic evidence** would seriously detract from Ismil's claims of innocence and the possibility of a false confession. Conversely, the absence of any such incontrovertible forensic evidence would lend credence to his account of providing a false confession.

15. Having considered Ismil's case carefully in the context of the available information and scientific/medical opinion, I would caution against undue reliance being placed upon his confession as there is a **significant likelihood that his confession is false**.

16. Ismil's poor command of English is likely to have hindered a proper and thorough psychiatric evaluation being conducted by Dr Cheong and Dr Phang shortly after the alleged murder.

[emphasis in original]

384 It was also Dr Ung's evidence that if Ismil was found to be present at the scene of the crime but was not the assailant, he would qualify for the defence of diminished responsibility.[note: 288] If Ismil was the assailant, then Dr Ung was not so certain whether Ismil would qualify.[note: 289]

385 In cross-examination, Dr Ung said that his assessment that Ismil had been suffering from moderate to severe withdrawal was based on Ismil's answer to a questionnaire and oral responses during the interviews. Also, Ismil had mentioned additional symptoms after Dr Ung had sought to find out whether he had had more symptons[note: 290] and had prompted some responses.[note: 291] Dr Ung pointed out that even Dr Winslow was trying to understand why there was not a stronger withdrawal reaction since Ismil was a moderate to heavy abuser. He noted that Dr Winslow had surmised that perhaps the rush of adrenalin might have partly compensated for the withdrawal symptoms. I would add that Dr Winslow had also mentioned that some tolerance may be developed by a habitual abuser.

386 Dr Ung was of the view that even if Ismil was experiencing mild withdrawal, his other conclusions about the likelihood of a coerced false confession remained because of a confluence of factors, that is, Ismil's low intelligence and personality and the stress he faced.[note: 292] However, he placed the most emphasis on Ismil's low intelligence.[note: 293]

387 Dr Ung said he did not attempt to speak to Ismil in English. He understood from Ismil that he (Ismil) had difficulty in communicating with Dr Phang and Dr Cheong in English and Dr Ung gathered from Dr Winslow's report that Ismil was more comfortable in Malay. Dr Ung was unaware that Dr Phang had conducted his interviews with Ismil entirely in English.[note: 294] Ismil had given two reasons to Dr Ung as to why he had not disclosed the full range of withdrawal symptoms to Dr Cheong or Dr Phang. One was that he found it difficult to fully express himself in English. The second was his fear that the doctors would share the information with the police.[note: 295] In para 17 of Dr Ung's report, he also said that Ismil had told him that he wanted to bring up his innocence with Dr Cheong and Dr Phang but did not do so partly out of fear that his retraction would lead to anger (presumably from CID) and he found it difficult to express himself in English.

388 As for the occasion when Ismil denied any involvement in the murder in the early morning of 7 May 2005, Dr Ung said this fact did not contradict his opinion that Ismil was an unassertive person because eventually when the CID officers got angry, Ismil just gave way.[note: 296] I should mention here that that was not accurate. Firstly, Ismil did not give way then. Secondly, it was not disputed that if I were to find that he had first made a confession to SSI Zainal later in the morning of

7 May 2005 at the car park of Block 185, the confession was not in response to anger but a comment from SSI Zainal about fingerprints.

389 The prosecution called a number of witnesses for rebuttal.

390 Dr Winslow had given evidence before the close of the prosecution's case. When he was called for rebuttal, his evidence was that he understood that Dr Ung had used a Clinical Withdrawal Assessment Scale for Benzodiazepines ("CIWA-B") on Ismil to ascertain Ismil's level of withdrawal when he gave his statements. In Dr Winslow's experience, all withdrawal scales are never used retrospectively and instead clinical observation is used.[note: 297]

391 Dr Winslow said that a moderate to severe abuser of benzodiazepine would not necessarily have moderate to severe withdrawal. He gave the example of a female patient who took 46 tablets of Dormicum every day and yet had uneventful withdrawal.[note: 298]

392 Dr Winslow said that during his interviews, Ismil could present his own version if he wished.[note: 299] Based on the consistency of Ismil's accounts in his various statements, Dr Winslow was of the view that Ismil had not made false confessions. However, if the consistencies were because each of Ismil's statements had been read back to him before the next statement was recorded, then Dr Winslow was less certain in his opinion.[note: 300] Dr Winslow accepted that a person with a lower IQ would be more susceptible to suggestions, generally speaking. He said Ismil could speak English although he would probably have difficulty expressing himself purely in English.[note: 301]

393 Dr Winslow agreed that benzodiazepine intoxication and withdrawal is generally accepted as a mental disorder under the *Diagnostic and Statistical Manual of Mental Disorders*.[note: 302] He also agreed with the following criteria to note the severity of withdrawal as stated in *Benzodiazepine Dependence* (Oxford University Press, 1993) (Cosmo Hallstrom ed) at p 61:

> The present authors defined severe benzodiazepine withdrawal syndrome as being made up of three criteria, all of which had to be met:
>
> There must be a record of at least three of the following new complaints emerging in association with the withdrawal of benzodiazepines: (a) impairment of memory**;** (b) impaired concentration**;** (c) insomnia**;** (d) lack of energy**;** (e) metallic taste in mouth; (f) blurred vision; (g) eye soreness; (h) light/touch/noise sensitivity; (i) derealization; (j) cramps**;** (k) pins and needles; (l) severe pains.
>
> At least two of these symptoms should be reported to persist for 4 weeks following the last dose.
>
> At least one of these symptoms should be of sufficient intensity to clearly interfere with the person's daily life.

394 He agreed that Ismil had complained of his bones feeling painful, appetite down, soft or watery stools and his sleep being affected but added that Ismil was also going through withdrawal from Subutex or Buprenorphine and such symptoms were mainly Subutex withdrawal. He agreed that Ismil had complained that the withdrawal symptoms lasted more than two weeks. He added that the prison psychiatrist was treating Ismil for some of the symptoms like difficulty in concentrating and focusing.[note: 303] He also noted that symptoms like impairment of memory, impaired concentration,

insomnia, lack of energy were also symptoms associated with anxiety disorder and feeling fearful or depressed.[note: 304]

395 Dr Phang was also re-called to give rebuttal evidence for the prosecution. As mentioned above at [320], he had interviewed Ismil on 15, 17 and 21 June 2005. The interviews were over four hours and 50 minutes with the first interview being the longest. In the interviews, Ismil had confessed to being at the scene of the crime at the material time although he had said that the deceased was killed accidentally.

396 Dr Phang was of the opinion that a person would have to have very severe mental retardation in order to claim that he has an abnormality of mind. It would have to impair his adaptive functioning. Dr Phang said that it was dangerous, unethical and untenable to rely solely on an IQ score. This had to be combined with clinical observations.[note: 305]

397 Kok Lee Peng, Molly Cheang and Chee Kuan Tsee ("Kok, Cheang and Chee"), *Mental Disorders and the Law* (Singapore University Press, 1994) states at p 93 as follows:

> In homicide cases and in respect of the diminished responsibility defence, the pertinent question is whether the subject is mentally impaired or not as measured by IQ (Intelligence Quotient) tests and also whether the subject is able to function independently. …
>
> IQ tests and estimates have never been proved to be reliable guides in assessing criminality generally and diminished responsibility in particular.

398 The *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association, 4th Ed, 2000) states at pp 41– 42:

> The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). …
>
> *General intellectual functioning* is defined by the intelligence quotient… Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior. Conversely, Mental Retardation would not be diagnosed in an individual with an IQ lower than 70 if there are no significant deficits or impairments in adaptive functioning. …
>
> Impairments in adaptive functioning, rather than a low IQ are usually the presenting symptoms in individuals with Mental Retardation. *Adaptive functioning* refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting. …
>
> [emphasis in original]

399 Dr Phang said there was no overt breakdown in communication even though he had communicated with Ismil in English.[note: 306] His ability to comprehend and reason was not limited, neither was it limited to self-care, home-living, interpersonal skill and use of community resources like taking a bus and getting around. He had self-direction although he was lacking in functional academic

skills. However, although Ismil is not book-smart, he is "most decidedly and certainly street-smart". He is very far "from the wonderable, suggestible, acquiescent anxiety-prone individual which some may endeavour to portray him as".[note: 307] Dr Phang noted Ismil's history of truancy and fights (as disclosed by Ismil to him) and said that an acquiescent individual does not play truant and does not fight.[note: 308]

400 Dr Phang was impressed by Ismil's ability to concentrate through the three interviews. Ismil's responses were logical and reflected a very composed, alert, organised state of mind.[note: 309] Dr Phang did not have sight of Ismil's statements to CID when he conducted the interviews but having been furnished with them subsequently, he noted that what Ismil told him was broadly consistent with Ismil's statements to CID.[note: 310] Dr Phang noted that Ismil was already providing his own defence when he said to Dr Phang that the killing was unintentional.

401 Dr Phang did not agree with Dr Robers' report that Ismil's cognitive functioning was limited thus creating problems for everyday functioning, judgment and academic or occupational achievement. In his view, there was no problem with everyday functioning nor was there deficient judgment or lack of occupational achievement for Ismil although Dr Phang accepted that, generally, there would be some problems with cognitive functioning for persons who fall within the same IQ range.[note: 311]

402 Dr Phang had also taken into account Ismil's consumption of Dormicum and was of the view that the consumption and his low IQ did not lead to a conclusion of diminished responsibility.[note: 312]

403 As for the issue of false confessions, Dr Phang noted that Ismil was not unfamiliar with police procedures.

4 0 4 *The Psychology of Interrogations and Confessions: A Handbook* (Wiley, 2003) (Gisli H Gudjonsson) ("Gudjonsson") states at pp 324–325:

> It is commonly argued that people with learning disability are more suggestible than normal people (Brandon & Davies, 1973; Craft, 1984; Tully, 1980; Woolgrove, 1976). There is substantial empirical evidence to support this view (Tully & Cahill, 1984; Clare & Gudjonsson, 1991); but it is worth remembering that the relationship between suggestibility and intelligence is mediated by a number of factors, including previous interrogative experiences and convictions (Sharrock & Gudjonsson, 1993). However, I have assessed many persons with learning disability who were far from being suggestible or compliant. Therefore, one cannot assume that these persons are necessarily unduly suggestible, even though their condition increases the likelihood that they are. Conversely, there are many people of good intellectual ability who prove to be abnormally suggestible on testing. In other words, *suggestibility needs to be assessed directly rather than assumed on the basis of IQ scores*. Furthermore, when drawing inferences about an individual case, *possible situational sources of suggestibility must not be overlooked*.
>
> …
>
> We do not know the number of persons with learning disability who are so disadvantaged during interrogation that they make a false confession. There is evidence that persons with learning disability tend to confess particularly readily during custodial interrogation (Brown, Courtless & Silber, 1970). However, little is known about the characteristics that make persons with learning disability likely to confess falsely during custodial interrogation as opposed to making a true confession. They would be expected, generally speaking, to have fewer intellectual and social resources to cope with the demand characteristics of the interrogation and confinement.

However, the factors that make persons with learning disability likely to confess falsely vary from case to case. We have to look at the combination of factors rather than any one acting in isolation. What is required is to identify specific vulnerabilities that are potentially relevant and evaluate these in the context of the total circumstances of the case. Just because a defendant has learning disability, it does not necessarily mean that he or she is prone to making false confessions or erroneous statements during interrogation. Each case must be assessed and considered on its own unique merit.

[emphasis in original]

405 Dr Phang also agreed with the following comments in p 316 of Gudjonsson:

The Retraction

As discussed in Chapter 8, not all false confessions are retracted, and a retraction by itself does not lend authenticity to the defendant's claim that the confession is false. However, it is important to establish whether the confession has been retracted and how soon after the confession it was retracted. An inordinately long delay in retracting a confession requires an explanation from the defendant. As a general principle, once the pressure of the interrogation is over an innocent defendant would be expected to retract the confession at the earliest opportunity, depending of course on the type of false confession it is. A confession that is first retracted several weeks after it has been made, and following a visit to a solicitor, is suspicious and will inevitably be treated with scepticism by the court unless there is a satisfactory explanation for the delay. However, in some cases, the defendant may not retract the confession for several years, but still succeeds on appeal (see the cases of Judith Ward & Darren Hall in Chapter 18).

406 Dr Phang further agreed with pp 311 and 312 of Gudjonsson which states:

The psychological assessment, when dealing with issues relevant to voluntariness and reliability of self-incriminating statements, may require an evaluation of six groups of factors, which can be labelled as follows.

1. The circumstances of the arrest and custody.

2. Characteristics of the defendant.

3. Mental and physical state during custody.

4. Interrogative factors.

5. An explanation for the alleged false confession.

6. The retraction.

407 He said he had focussed on the characteristics of Ismil. Also, during the interviews, he had noticed that Ismil was of lower intellect than the average person.[note: 313]

408 To Dr Phang, Ismil did not come across as a credulous, weak-willed individual who had simply confessed just because no one believed him.[note: 314] Dr Phang was of the view that it was unlikely that Ismil's confessions in the statements to CID were false.[note: 315]

409 Certain witnesses for the prosecution were also called or re-called at the request of counsel for Ismil.

410 SSI Lai was one of the witnesses. As mentioned above (see [324]), he was the officer who had interviewed Mr Loh at NUH the night before, *ie*, on 6 May 2005, after Mr Loh was conveyed from the deceased's flat to NUH. The information which SSI Lai recorded from Mr Loh was as follows:

> Mr Loh informed that at about 8.10am, his wife (deceased) opened the gate to chase away the cats. While lying on his bed in room nearer to the kitchen, he saw a male Malay look like drug addict came [*sic*] into his house.
>
> The male malay entered the kitchen. He heard his wife shouting for help. Thereafter, he heard nothing from his wife.
>
> The male malay then came to him. He was holding a chopper and came near me and put his other hand on my throat. After a while, the male Malay opened the door and left the house. Mr Loh could remembered [*sic*] the description of the male Malay.
>
> Wearing cap,
>
> Dark complexion,
>
> Skinny built,
>
> About 1.58m tall,
>
> Wearing shirt with 2 pockets.
>
> Mr Loh also revealed that 2 days ago the same male Malay came to his house to offer him cake but was turned away by his wife (Deceased).

411 SSI Lai was also one of the two CID officers (the other being Inspector Wee) who interviewed Ismil in the early morning of 7 May 2005 at Jurong Police Division Headquarters. He could not remember whether Muhammad was told by Inspector Wee or him (*ie*, SSI Lai) that the murder took place in Block 185 or that there were two persons in the deceased's flat or that Mdm Tham had died.

412 Inspector Wee also gave evidence after the close of the evidence for Ismil. He said Ismil was told that an old lady was murdered in Block 185. He could not remember if Ismil was told that knives were used or that the deceased's husband was present in the deceased's flat at the time of the murder.

413 SSI Zainal was re-called. He said he did not feed any information to Ismil when he spoke to Ismil on 7 May 2005.

414 The IO was also re-called to give evidence on 8 May 2008. By then, 12 additional photographs had been taken, presumably on his direction, and were admitted by consent. They were meant to show the line of sight of Mr Loh from his bedroom where he laid.

415 The IO maintained that as regards the recording of Ismil's statements by him, with the assistance of an interpreter, Ismil was responsive. Most of the time, Ismil did not have to think too long before giving his response.

416 ASP Bakar was re-called too. He said he had no difficulty communicating with Ismil.

417 Sapiahtun also gave further evidence. She said Ismil could respond quite spontaneously to questions although there were occasions when he took some time to answer. She had spoken to Ismil simply and he did not have difficulty in understanding her.

418 However, it transpired that she had interpreted a warning for a statement recorded under s 121 CPC wrongly. The written warning stated: "You are bound to state truly the facts and circumstances with which you are acquainted concerning the case save only that you may decline to make with regard to any fact or circumstances a statement which would have a tendency to expose you to a criminal charge or to a penalty or forfeiture." Sapiahtun said she first interpreted the warning literally and then in a simplified version. In the latter, she told Ismil that he had to tell everything and the whole truth about the case but he need not say anything which had nothing to do with the case, especially when it could expose him to a criminal charge, penalty or forfeiture.[note: 316]

419 Iskandar was re-called. He said he did not have any difficulty communicating with Ismil.[note: 317]

420 Masdiana was also recalled in the light of Sapiahtun's evidence as to how she had interpreted the warning against self-incrimination to Ismil. It will be re-called that Masdiana was an interpreter for Muhammad. However, it appeared that she had interpreted the warning correctly to Muhammad.

The Court's Conclusion

421 Ismil and Muhammad were facing a charge of murder which was committed in furtherance of their common intention to commit robbery at the deceased's flat on 6 May 2005 between 8am and 2pm. The statements of Ismil and of Muhammad to CID constituted material evidence. It was important to bear in mind that the statements of each accused person incriminated both of them by placing both at the scene of the crime at the time of the crime although Ismil's earlier statements incriminated himself only. The presence of Muhammad's DNA on the deceased's purse was at best corroborative evidence against him. The admissibility of the statements was therefore crucial. I had ruled that they were admissible. Nevertheless, Ismil's defence mounted a vigorous campaign at trial to persuade me either not to admit his statements or to give no weight to them by raising the issue of his low IQ and his personality coupled with, again, the issue of his withdrawal symptoms.

422 The question of Ismil's withdrawal symptoms had already been raised and dealt with in the *voir dire* to decide on the admissibility of his statements. Nevertheless, it was raised again by his defence this time in the context of a psychological assessment by Dr Robers and a psychiatric assessment by Dr Ung which dealt with his low IQ and personality.

423 I accepted Dr Winslow's opinion that the CIWA-B test which Dr Ung applied to Ismil should not have been applied retrospectively to determine the severity of Ismil's withdrawal. The accuracy of such a test depended on the truth of Ismil's responses. It also seemed to me that Dr Ung was too willing to accept Ismil's responses in the test as well as his responses in interviews at face value.

424 Ismil's defence argued that even Dr Winslow was not as certain of his earlier assessment of the severity of Ismil's withdrawal symptoms. Dr Winslow had placed some reliance on the broad consistency in Ismil's statements but was prepared to express less certainty for his opinion when he was told by defence counsel that Ismil's previous statements to CID would have been read back to

him before the next statement was recorded. However, not every one of Ismil's statements was read back to him first. Only the ones recorded by the IO at PCC were done in this manner. When Ismil was brought for a scene visit on 19 and 20 May 2005, his previous statements recorded at PCC were not read back to him immediately before his next statement at Block 185 was recorded. Likewise for his statements to SSI Zainal or ASP Bakar. His previous statements were also not read back to him when his cautioned statement was recorded by Inspector Ang. There was broad consistency between all these statements except for the time when he learned that Muhammad had confessed to being involved. That was when his statement to ASP Bakar on 3 June 2005 and to the IO on 9 June 2005 began to change by including Muhammad at the scene of the crime. He also changed some particulars as I shall elaborate later.

425 Furthermore, when Ismil was being interviewed by Dr Phang on the three dates of 15, 17 and 21 June 2005, none of his earlier statements had been read back to him just before each interview. Dr Phang did not even have a copy of any of these statements then and neither did Ismil. Ismil received a copy in the form of the PI documents about a week before 22 December 2005. Yet, Ismil's statements to Dr Phang were broadly consistent with what he had told CID, including the presence of Muhammad at the scene of the crime.

426 Like Dr Phang, I noted that for all the allegations about Ismil's withdrawal symptoms, he had already begun to outline his defence from the time he gave his first formal statement on 7 May 2005 which was recorded by ASP Bakar. He had already said he had accidentally stabbed the deceased. It was suggested by Ismil's defence that the fact that he would suggest this might work in his favour because no one in his right mind would make such a suggestion when more than 100 blows had been applied. I was not persuaded by such a suggestion. In my view, the fact that Ismil was already trying to state a defence, however weak that defence might seem, suggested to me that his mind was not as affected by withdrawal symptoms as his defence was suggesting. He knew the consequences of confessing (first to SSI Zainal and then to ASP Bakar) about having attacked the deceased.

427 Furthermore, it did not escape my attention that initially he had steered away from mentioning Muhammad's presence at the scene of the crime until he was told that Muhammad had confessed to being involved. This also suggested to me that his mind was not as affected by withdrawal symptoms as his defence was suggesting.

428 Also important was the fact that he did not exhibit more severe withdrawal symptoms or mention them to CID officers, the interpreters or Dr Cheong.

429 It was suggested by Dr Ung and Ismil's defence that Ismil's English was poor. Much was made of this during the trial with emphasis being placed on the fact that Dr Yeo had mentioned in her report dated 1 April 2008 that Ismil could not express himself well in English and that Dr Winslow also mentioned (in the *voir dire*) that Ismil would have difficulty expressing himself purely in English. However, Dr Ung had not attempted to interview Ismil in English. On the other hand, Dr Phang conducted his interviews with Ismil primarily in English with Ismil responding in English and partly in Malay. Dr Phang's case notes recorded some of Ismil's responses verbatim, for example, in the interview on 15 June 2005:

> "And then suddenly my leg kena the table, I fell down, the old lady also follow & the knife suddenly. I don't know, kena the old lady, I don't know which part, I can't remember that one"
>
> "After that I very scared. And then I ask my bro to go out, then I also go out. Can't remember where/what happened to the knife – but "sure" that the knife did not go back to his own flat.

430 Dr Ung had criticised Dr Phang for conducting his interviews with Ismil in English. I saw no valid reason for such criticism. From Dr Phang's notes, it was clear to me that each was able to communicate effectively with the other.

431 More importantly, the emphasis on Ismil's poor English lacked specificity. For example, what did Ismil want to say to Dr Cheong or Dr Phang about his withdrawal symptoms or his innocence but could not do so because of his poor English? After all, he was able to communicate with Dr Cheong about buttock pain from having sat too long and leg pain because of the presence of cuffs. Ismil avoided addressing this issue of specificity squarely in his evidence. The emphasis on his poor English was a distraction.

432 Besides, the IO had an interpreter with him. Also, ASP Bakar could speak Malay. Yet, Ismil did not at any time disclose more severe withdrawal symptoms to any of them or seek aid.

433 Accordingly, my view of Ismil's withdrawal symptoms remained. They were mild to, at most, moderate.

434 I come now to the issue of Ismil's low IQ and personality. Dr Ung's opinion was that, among a confluence of factors, Ismil's low IQ was the strongest factor which gave rise to a significant increase in the likelihood of a false confession although he agreed that a low IQ did not necessarily mean that Ismil's confessions were coerced-compliant false confessions.

435 Let me first say that I noted that Muhammad's IQ was also low, *ie*, 76 according to Dr Sathayadevan's report of 13 February 2008. Yet, it was not suggested by his defence or Ismil's defence that Muhammad's statements to CID were also likely to be coerced-compliant false confessions. This omission detracted from Dr Ung's opinion that a low IQ alone gives rise to the significant risk mentioned in [434].

436 I accepted Dr Phang's opinion that Ismil's IQ should not be considered in isolation. Presumably, Ismil's defence had come to the same conclusion and that is why the defence's submissions urged me to consider both his low IQ and his personality as well as the severity of his withdrawal .

437 Secondly, the issue about Ismil's low IQ and acquiescent personality was raised very late in the day. True, the psychological and psychiatrist assessments were undertaken late in the day but they should have been done earlier. If Ismil was acquiescent in personality, this would have been noticed by his counsel or, at the very least, Muhammad and his family members would have been aware of this. Also, none of his family members testified to his acquiescent personality. Their evidence, and the evidence of fellow inmates, did not suggest that he was acquiescent.

438 Dr Phang's evidence that Ismil was street-smart was more persuasive than Dr Ung's evidence of an acquiescent personality. I reiterate again how Ismil had already begun to outline his defence of an accident at an early stage and how he avoided mentioning Muhammad's involvement until much later. These factors supported Dr Phang's view.

439 Ismil's performance on the witness stand as someone who could not understand questions was not convincing. It seemed to me that he knew when to be evasive in cross-examination. For example, when he was asked why he had admitted to being involved in Mdm Tham's death when he claimed he was innocent, he indicated that he did not understand the question.[note: 318]

440 At the end of cross-examination, he sprang a surprise by saying that he did not understand about half of the contents of his statements to CID even with the benefit of Malay translations. He

also suggested that he did not understand the questions posed to him during cross-examination if they were too long.[note: 319] Again, these were general allegations. He did not identify which parts of his statements and which questions he did not understand. Also, the only suggestion to the recorders or the interpreters at the trial was that he had made false statements either on his own accord or because of suggestions made to him by the recorders or other CID officers. Such suggestions militated against his latest position that he did not understand about half of his statements. Also, if he did not understand them, then the implication would be that parts of his statements would have been fabricated by the recorders and/or the interpreters. That was a most serious implication which was never suggested to these persons when they were cross-examined.

441 Ismil's latest position in evidence about not being able to understand about half of the contents of his statements reinforced my view that he was street-smart and was capable of coming up with ideas to help himself. He was not the acquiescent person that his defence had been trying so hard to portray him as. I was satisfied that his statements were not coerced-compliant false confessions arising from the pressure of his arrest and the interviews and/or because he wanted the interviews to stop.

442 In view of the arguments raised for Ismil, I also considered whether Muhammad's low IQ and personality provided any reason not to admit or place any weight on his statements, even though this was not raised in Muhammad's defence.

443 Muhammad appeared to be more forthcoming than Ismil in giving his oral evidence. From Muhammad's demeanour in court and the twists and turns in the various positions he had taken (see [334] to [338] above), I was convinced that he is a street-smart and cunning person and is not at all acquiescent.

444 There was also no suggestion that Muhammad was unable to understand the consequences of his statements. In the circumstances, I was satisfied that he was not coerced into giving such statements because of the pressure of his arrest and the interviews and/or because he wanted the interviews to stop.

445 Coming back to Ismil, his defence raised the point that Sapiahtun had misinterpreted the caution (under s 121(2) CPC), as elaborated in [418] above, to him. It was accepted that she did so unintentionally.

446 In *Mazlan* ([170] *supra*), the Court of Appeal held at pp 520–521 as follows:

> Accordingly the answers to the questions referred are:
>
> (1) a suspect or an accused need not be expressly informed of a right to remain silent whenever any statement is recorded from him pursuant to s 121(2) of the CPC;
>
> (2) a failure to so inform him is not a breach of his constitutional rights under art 9(1) of the Constitution; and
>
> (3) a statement recorded from a suspect or an accused under s 121(1) and sought to be admitted in evidence under the provisions of s 122(5) may be so admitted even if no caution has been read to him in terms of s 121(2); but if, in addition to these circumstances, he was told at the time he made the statement that he was bound to state truly everything he knew concerning the case, such statement may not be admitted by reason of his having been induced to make it, within the meaning of s 122(5).

447 It may be that the Court of Appeal in *Mazlan* was influenced by *Lim Kim Tjok v PP* [1978] 2 MLJ 94 in which the High Court said, at p 95, that "It is settled law that words 'you had better tell the truth' or equivalent expressions have always been held to import a threat or inducement."

448 However, in *Osman bin Din v PP* [1995] 2 SLR 129, the Court of Appeal took a less stringent view and said, at pp 137–138:

> As regards the allegation of 'you had better tell the truth', it has been held in *Lim Kim Tjok v PP* that those words or equivalent expressions have always been held to import a threat or inducement. However, in a recent pronouncement of Chao Hick Tin JC, as he then was, in *PP v Ramasamy*, the facts of each case have to be looked at individually. This was the position adopted by the House of Lords in *DPP v Ping Lin* where Lord Hailsham stated that the question should be approached in a common sense way and in the context of the individual case. To this extent, we agree with the pronouncements of Chao JC and Lord Hailsham and find that, even if the allegation in the present case was true, we do not see how the expression could amount to a threat or inducement in the circumstances. …

449 In *Ong Seng Hwee v PP* [1999] 4 SLR 181, it was contended that an incomplete caution had been administered to the appellant in the recording of his long statement. This was denied by the recording officer in the trial. On appeal, the High Court held that even if the caution administered reflected only the first portion of s 121(2) of the CPC, the appellant had not been induced to make the statement. The High Court concluded that the improperly administered caution had not operated in the appellant's mind nor caused him to make the statement. The appellant only decided to cooperate when a threat concerning his mother was allegedly made by the recording officer.

450 I was of the view that even if Sapiahtun's caution to Ismil could objectively constitute a threat or inducement to Ismil, it did not operate on the mind of Ismil who had never alleged during the *voir dire* or in the trial itself that he had said what he did partly because of Sapiahtun's caution. In the circumstances, I was of the view that Ismil's statements to the IO remained admissible.

451 I would add that Sapiahtun's caution would in any event not affect whatever statements Ismil had given to SSI Zainal and ASP Bakar on 7 May 2005. Such statements were given before Sapiahtun first administered the s 121(2) caution to Ismil on 11 May 2005. As regards Ismil's cautioned statement to Inspector Ang also on 7 May 2005, Sapiahtun was the interpreter but the warning she had administered was pursuant to s 122(6) and not s 121(2) CPC. There was no suggestion that she had got that wrong too.

452 Ismil's defence in the trial also raised the issue of SSI Zainal's alleged failure to comply with the PGO when he interviewed Ismil on 7 May 2005. The defence submitted that SSI Zainal had accepted that his handwritten note of what Ismil told him at the car park was not a statement of Ismil.

453 These two arguments were different. The issue of SSI Zainal's alleged failure to comply with the PGO had already been raised in the *voir dire* and I had admitted Ismil's statements even if the PGO had not been complied with. The omission to comply with the PGO, or even with s 121(3) CPC, did not mean that a statement, if made by Ismil, was any less his statement. What SSI Zainal had meant was that his handwritten note (of what Ismil had said) was not a statement for the purpose of s 121(3) CPC since it was not signed by Ismil. It was in that context that he agreed with Ismil's counsel that his handwritten note was not a statement of Ismil.

454 Although s 121(3) CPC requires a statement of a person examined by a police officer to be

signed, s 122(5) CPC allows any statement of an accused person, whether oral or in writing, to be admitted if the statement is made to a police officer of or above the rank of sergeant. How an oral statement is to be proved is another matter. The above applies equally to the next statement allegedly made by Ismil to SSI Zainal also on 7 May 2005 but at JWNPC.

455 I come now to the question whether Ismil did in fact make a confession at the car park of Block 185 on 7 May 2005 as alleged by SSI Zainal. If he had not, it would have been foolish of SSI Zainal to inform ASP Ng and ASP Goh that he did. Furthermore, I noted that in para 14 of Ismil's statement to the IO of 17 May 2005 (see [77] above), he said that he had, "admitted to the Malay officer that I had stabbed my Chinese neighbour the day before …" and then he was brought to JWNPC. Secondly, on 18 May 2005, question 32 from the IO asked Ismil what made him confess to the stabbing of his neighbour to the Malay CID officer. His answer was that he was told that his finger print was found in the deceased's flat and, upon hearing that, he knew that CID knew that he had stabbed the deceased (see [81] above). These two particular responses contradicted his evidence at trial that what he said to SSI Zainal was, "If it is there, it is there, so be it" and this was meant to be a denial. I was of the view that SSI Zainal's version of what Ismil had said then was the correct one.

456 As regards what Ismil was alleged to have said to SSI Zainal later in the morning at JWNPC, Ismil could not remember what he had said to SSI Zainal. I found SSI Zainal to be a reliable witness and accepted SSI Zainal's evidence that Ismil had then added that he had intended to borrow money and he took a knife from the deceased's flat and there was an old man lying on the bed. These were the additional details subsequently recorded in SSI Zainal's field investigation diary later in the day.

457 In any event, such details and more were recorded by ASP Bakar from Ismil at JWNPC from about 12.45pm of 7 May 2005 as well as in subsequent statements after 7 May 2005.

458 Ismil's defence submitted that I should reject Ismil's confessions if he gave a good explanation for making the confessions in the first place. But what was the good explanation? Ismil was suggesting that he confessed because he was being repeatedly questioned and he decided to say what he believed CID wanted to hear. However, it must be remembered that he had denied any involvement during the first session in the early morning of 7 May 2005 at Jurong Police Division Headquarters. When SSI Zainal spoke to him in the carpark of Block 185 later, it was not a long interview session. Instead, his version was that he did not confess and not that he confessed because of repeated questioning. I found that he confessed because he thought that his fingerprints had been found at the deceased's flat. Again, it was not suggested that he confessed to SSI Zainal a second time, at JWNPC, because of repeated questioning. His version was that he could not remember what he said to SSI Zainal then. He then said that he confessed to ASP Bakar at JWNPC that same day because of repeated questioning earlier. I did not accept this reason which was not a good reason in the circumstances. Furthermore, he had not retracted his confession even when he was interviewed by Dr Phang. I did not accept his explanation (to Dr Ung) that he was afraid that what he said to Dr Phang might be seen by CID and he might be beaten up. He had not been beaten up by CID up to the time of Dr Phang's interviews. I also did not accept a belated suggestion by his counsel (in the midst of trial) that he saw Dr Phang as an extension of CID and was therefore afraid to tell the truth. He himself did not say this. When asked why he had purportedly lied to Dr Phang, he said he had just lied (see [360] above).

459 There was one other point about the lateness of Ismil's retraction. When Ismil learned from SSI Mazlan that Muhammad had confessed to being at the scene of the crime or from the court proceedings that Muhammad was being jointly charged with him for the murder of the deceased, he could and should have seized the opportunity to state his innocence and to ask CID to confirm with Muhammad that he (Ismil) was not even at the scene of the crime. He did not. Instead, he did the

opposite. He sought to put some distance between Muhammad and the murder and continued to incriminate himself as the assailant. To me, this was not the conduct of a person who had made false confessions.

460 Nevertheless, I accepted that all confessions should be treated with caution as a general principle.

461 Ismil's defence raised some discrepancies between the contents of his statements and some "facts".[note: 320] For example:

(a) Ismil's statement of 7 May 2005 to ASP Bakar had stated that he went to the deceased's flat at about 10am whereas Mr Loh's statements suggested the timing of the entry to be around 8.10am.

(b) In his statement of 11 May 2005 to the IO, Ismil said he had spoken to the deceased in Malay and she had responded in Malay to say that she did not have money, but her daughter's evidence was that the deceased did not speak Malay.

(c) Answer 16 of Ismil's statement of 18 May 2005 to the IO said that Mr Loh's legs were pointing in Ismil's direction but his legs were pointing in the other direction.

(d) In addition, during a crime scene visit on 19 May 2005, Ismil had pointed to the wrong bed to indicate which bed Mr Loh had been lying on.

(e) Ismil's statements referred to an accidental stabbing when it was otherwise.

(f) Ismil's statement of 3 June 2005 to ASP Bakar said that he had knocked on the main door and the deceased had opened the main door and gate but, according to Mr Loh's statements, the deceased had opened the main door and gate to chase away wild cats.

(g) Ismil's statement of 3 June 2005 to ASP Bakar mentioned that one Hashim, a friend, had left #04-154 with Muhammad and Ismil and walked up the staircase to the fifth floor but Hashim did not go up to the fifth floor that fateful day with them.

(h) Ismil's statement of 9 June 2005 said at para 21 that he had called out Muhammad's name and asked him to leave the deceased's flat but Mr Loh's statements did not contain such information.

462 On the other hand, the details in Ismil's statements suggested that it was likely that he was at the scene of the crime at the material time. For example, Ismil had first confessed to SSI Zainal at the carpark of Block 185 that he had stabbed the deceased. Later at JWNPC, he told SSI Zainal, *inter alia*, that he had taken a knife from the deceased's flat. How did he know how the deceased was killed or that a knife from the deceased's flat had been used? SSI Zainal said he did not disclose such information to Ismil. Neither did Ismil say that such information was provided by SSI Zainal or by the two CID officers who had interviewed him earlier. In his confession to ASP Bakar on 7 May 2005, he also said that he had taken a knife from the deceased's kitchen. When the IO drew three weapons, Ismil identified a chopper as the weapon used. How did he know such a detail if he was not at the scene of the crime then?

463 I was of the view that the details he was able to provide carried more weight than the alleged discrepancies. In any event, there was additional evidence against him as I shall elaborate below.

Before I do so, I make the following observations on some of the alleged discrepancies:

(a) Ismil might have made a mistake as to or fabricated the time when he went to or entered the deceased's flat and whether Hashim was with Ismil and Muhammad when they went to the fifth floor.

(b) Ismil could have lied that he had spoken to the deceased and she had responded in Malay.

(c) As for how entry was gained, there was some consistency between Ismil's later statements and Mr Loh's insofar as Ismil said that he had rushed in. I will elaborate on this point later.

(d) It is true that Ismil pointed to the wrong bed which Mr Loh was lying on. This was a factor but did not rule out his presence at the scene of the crime. Whether he had identified Mr Loh's legs as pointing in the wrong direction depended on where Ismil himself was standing in relation to Mr Loh. Also, Ismil had given evidence correctly stating that Mr Loh was facing the car park below.[note: 321]

(e) Ismil's allegation of an accidental stabbing did not establish his absence but rather his presence at the scene of the crime.

(f) Whether Mr Loh had said he had heard Ismil calling out to Muhammad to leave was neither here nor there. There was no evidence as to whether Mr Loh would have understood what Ismil had said and Mr Loh's statements did not pretend to be a comprehensive account of what had transpired. Also, Ismil himself could have made a mistake as to or fabricated this detail.

464 After all, Ismil himself said he had concocted some of the evidence. The question was which was true and which was concocted. In any event, I did not accept Ismil's evidence that some of his responses in his statements were in fact suggested to him. If CID had wanted to suggest to him what to say, they would have ensured more consistency in the details and he would not have been allowed to say that he could not remember, from time to time. Also, there were, on some occasions, interpreters and the interpreters were clear that no responses had been suggested to him.

465 I come now to an additional piece of significant evidence against Ismil which was outside of his own statements. Muhammad's statements had identified Ismil as the assailant. Yet, in the trial, Muhammad was belatedly claiming to be the sole perpetrator. His reason for identifying Ismil was that he feared for his own life. While this might sound plausible at first blush, it did not wash. It is common for one accomplice to blame another for a fatal assault to escape liability for the same but not to blame an innocent person, let alone his own brother, who was not even present or was in any way involved in the crime of robbery or murder. He also mentioned that he had blamed Ismil because Ismil had already been arrested[note: 322] but this was not convincing if Ismil was truly innocent. After all, he was close to Ismil[note: 323] and he had supposedly expressed his concern over Ismil at a family gathering after Ismil had been arrested. In my view, Muhammad's statements were damning against Ismil.

466 As for Ismil himself, I reiterate that he could and should have protested his innocence when he realised that Muhammad had confessed to being at the scene of the crime. Yet, he proceeded to describe Muhammad's role. This militated against the suggestion that Ismil himself was not even at the scene of the crime. If he himself had wrongfully confessed to being at the scene of the crime, how could he be so sure that Muhammad had not also wrongly confessed to being at the scene,

unless he (Ismil) was in fact at the scene too?

467 I come now to Muhammad's allegations or those of witnesses for Ismil that Muhammad had disclosed his sole involvement to his counsel, family members and fellow inmates. These allegations were made to persuade me that it was more likely than not that Muhammad was telling the truth when he said that he was the sole perpetrator.

468 In the first place, I was of the view that Muhammad had not mentioned the same to his family members and fellow inmates as early as he or they claimed he did. However, if he did mention this to them as early as claimed, it was, in my view, part of his plan to lay the groundwork to save Ismil if his statements and/or those of Ismil's were admitted in evidence. I accept that he mentioned his sole involvement to Mr Gill but, in my view, this was part of his plan to save Ismil.

469 I would add that I found Mr Lean's evidence on this point to be unsatisfactory. All I could glean from his evidence was that he had learned of the disclosure to Mr Gill quite close to the PI and because of the pressure of time, he did not pursue this with Muhammad. Thereafter, he and Mr Gill had spent a long time with Muhammad on his statements and Muhammad had confirmed that they were correct. Where was the follow-up with Muhammad on what he had earlier disclosed to Mr Gill? Surely Mr Lean would have asked Muhammad why he had said what he did to Mr Gill and stressed to him the importance of such information, if true, to both him and Ismil. He would have checked with Muhammad if he had been telling the truth or had been merely floating an idea as part of a plan to save Ismil. He would not have let Muhammad resile from this position without more. Yet, that was the impression Mr Lean was giving me.

470 Secondly, on one version, Muhammad had decided not to pursue the issue of his sole involvement with his counsel and was focussed on saving himself, thus leading to the attempt to seek a reduced charge and to claim an alibi. On the other hand, he was supposedly prepared to disclose his sole involvement to fellow inmates, any one of whom could have revealed this disclosure to the relevant authorities or to Ismil himself.

471 Thirdly, it was surprising, to say the least, that he was prepared to disclose his sole involvement to family members and fellow inmates but he did not tell anyone of them specifically to ensure that this vital information reached the ears of the person who would be the most affected by it, *ie*, Ismil. According to Rosnani, he only told her to tell Ismil not to admit to the charge which was quite different from telling Ismil that Muhammad had confessed to being the sole perpetrator. [note: 324]

472 Fourthly, it was incredulous that if Muhammad had disclosed such information to his sisters, they did not discuss with him what should be done with the information to save Ismil. They had not even attempted to locate or contact counsel for Muhammad or Ismil to seek legal advice as to what to do with such information.

473 Fifthly, Muhammad could not remember to whom he first disclosed such important information and Ismil too could not remember from whom he first eventually learned this information.

474 I need not elaborate further on other unsatisfactory parts of the evidence from the sisters and fellow inmates. It was clear to me that they had come forward to give the evidence they did as part of a contrived plan to save Ismil.

475 Ismil's defence also relied on Mr Loh's two statements to CID officers on 7 May and 5 September 2005 to support Muhammad's assertion that there was only one perpetrator. Mr Loh's

statements were based on what he had remembered of the incident on 6 May 2005. He had been traumatised that day. Subsequently, he identified three persons when he was asked to identify the thief who had entered the deceased's flat that day. Nevertheless, I agreed that I should not reject his statements outright, although I treated them with caution.

476 Importantly, Mr Loh's statements did not rule out the presence of more than one perpetrator. In his statement of 5 September 2005, he said the deceased was outside her flat to chase away cats and thereafter, a thief came into her flat. He did not see his wife coming back into her flat. The thief went into the kitchen and he heard his wife shouting for help from the kitchen. So it was quite possible that if there was another perpetrator, Mr Loh also did not see him enter or leave her flat.

477 It was also important to bear in mind the following as regards Mr Loh's position in his bedroom:

(a) Mr Loh's bed was not facing the door opening of his bedroom. It was facing a wall which was perpendicular to the wall which had the door opening.

(b) The top edge of Mr Loh's bed was about flush with the right edge of the door opening when one looks into his bedroom.

(c) Mr Loh was lying on his back with a nasogastric tube attached to his nose. He was not lying on his right side. The nurse Tan Bee Choo thought that he was not able to see into the living room[note: 325] but his daughter Catherine said that he was able to see her standing outside the deceased's flat on 6 May 2005 when he turned his head after the police had opened the main door.[note: 326] Even then, this evidence showed that he had to turn his head (to the right) to do so. I add that he would also have had to look upwards to look through the door opening as his head was just below the opening.

478 It was unlikely that Mr Loh would have been able to keep his head constantly turned to the right and his eyes constantly looking upwards. Therefore, he could have missed seeing someone else in the deceased's flat.

479 Ismil's defence also stressed that as the prosecution itself had changed its original position that Ismil was the assailant, which position was based on the statements of Ismil and Muhammad, the prosecution had demonstrated that the statements were untrue and unreliable.

480 At the commencement of the trial, the prosecution had only the statements of the accused persons and the DNA evidence on the black purse to go on. Hence, they initially proceeded on the basis that both Ismil and Muhammad were present but Ismil was the assailant. After Muhammad took a different stand, he proceeded to give more details of the incident as set out in the prosecution's closing submissions which I have set out above. The relevant paragraphs of the prosecution's closing submissions for present purposes are paras 101–103 (see [329] above). At paras 167 and 170–171, the prosecution then submitted:

167. This Honourable Court would also no doubt take cognizance of the fact that Muhammad was able to explain, with considerably more fluidity and detail, the manner in which Ismil had stabbed the deceased than Ismil was able to fully expound on in his respective statements. In this regard, it is difficult not to come to the conclusion that the reason for the considerable comprehensiveness of his statements in relation to the circumstances surrounding the stabbing of the deceased is particularly indicative of the fact that he had, in fact, been the person who had

stabbed the deceased and his statements were nothing more than the mere by-product of an accused person who had been attempting to downplay his own involvement in the entire affair. As Muhammad himself explained in Court, he "made it in such a way that what I did was done by my brother."

170. The Prosecution humbly submits that the conclusion that Muhammad had been truthful in his oral testimony in Court as to *his own involvement* in the flat of the deceased on 6 May 2005 is further buttressed by his ability to shed considerable light on certain events that had transpired along the way during the course of his oral testimony. To state but a few more pertinent examples, Muhammad stated that he had worn Loh's shoes during the cleaning-up at the scene, an action that would serve to succinctly explain the reason that none of the footprints that had been found at the scene matched the analysis made on Muhammad's and Ismil's shoes. In this regard, it warrants mention that Muhammad was able to explain that he had taken the shoes in question from the shoe rack that was located behind the deceased' flat's door, a fact that would have been unknown to Muhammad had he not, in fact, done so since the shoe rack did not feature in his initial sketch plan. The fact that the Police were, in the circumstances, unable to find the shoes in question was also convincingly explained away by Muhammad *via* his testimony that he had discarded the shoes at the stair case landing between the 8th or 9th floor of the said apartment block: as Your Honour would no doubt recall, the Police only searched for clues up to the sixth floor during the course of investigations.

171. There is also no reason to disbelieve the fact that Muhammad had, in fact, been the sole attacker of the deceased. Quite apart from his ability to recount significant parts of what had transpired during the attack (especially when seen in the context of Ismil's inability to do the same in the statements given to the police) in the statements that he had given to the police, the manner in which the attack took place appeared to possess a certain sense of fluidity and did not suggest that two parties, as opposed to one, had physically attacked the deceased. Indeed, Muhammad's account *vis-à-vis* the attack itself (as found at [101] above) is generally consistent in that it was able to provide a full and coherent account of the three separate episodes of attacks and what motivated him to attack her a second and third time. In this respect, Muhammad's testimony in relation to his singular role in *attacking* the deceased takes on especial force in light of his testimony that he had thrown the knife handle in question into the rubbish chute, a fact that would cogently explain why no handle had been found at the flat.

[emphasis in original]

481 As already mentioned (see [443]), it seemed to me that Muhammad was the more articulate of the two accused persons. Secondly, he had had plenty of time to come up with the version he wanted to present at the trial in order to persuade the court that he was the sole perpetrator. Indeed, he had taken three or four days to prepare a statement at QRP which he was allowed to rely on when presenting his evidence. This was Exhibit D2-1.[note: 327]

482 Thirdly, he had had the benefit of Mr Loh's statement of 5 September 2005 before he gave evidence at the trial.[note: 328] He could therefore tailor as much of his evidence to fit what Mr Loh had said to the extent he so desired.

483 Fourthly, the details Muhammad had provided such as what had happened to a knife handle and a pair of shoes and his description of three episodes of attack did not necessarily mean that he was the assailant. He could have been the accomplice who had witnessed the assault.

484 Furthermore, the prosecution would not know whether such details were true or not. For example, there was a pair of shoes which Muhammad claimed he had taken from a shoe rack inside the deceased's flat and worn in the said flat. This was supposed to be the missing pair one of whose print was found in the deceased's flat (see [323] above). The pair of shoes was probably bloodied and even wet since Muhammad said the kitchen floor was washed to wash away blood stains. Why would the assailant (or his accomplice) take the trouble to carry the shoes to the eighth or ninth floor with the attendant risk of being seen with such an object in his hands and why would he leave it at a staircase landing where it might have been discovered? The residents in Block 185 must have soon learned about the murder but no one came forward to say he had seen a pair of bloodied and wet shoes. Would it not be more likely that the perpetrator, who had taken the trouble to wash away some blood stains and to wipe the chopper and cupboard as well as the kitchen top and who had thrown a knife handle down the rubbish chute, would have also thrown the shoes down a rubbish chute of the deceased's flat or his own flat (which was nearby to the deceased's) rather than leave it at a staircase landing at a higher floor?

485 Muhammad's oral evidence as to how the deceased had asked him for help earlier and how he subsequently brought food to the couple and how he gained entry on 6 May 2005 was also suspect. He had said that around end April 2005 at about 6pm, when he was about to enter his flat, the deceased had called him from the fifth floor to seek his help to lift Mr Loh who was bedridden. On a second occasion, he and Mamat Jurong went to the deceased's flat out of pity, not just for Mr Loh, but for the deceased also.[note: 329] The deceased accepted the food but he did not enter her flat then. On 6 May 2005, he gained entry by using hand signals to tell the deceased that he wanted to see Mr Loh and she let him in.

486 Yet, the nurse said that the deceased was a nervous sort of person[note: 330] and the deceased's daughter said she was wary of strangers. The deceased would not open the main door immediately upon a knock on the door and would first look through a peep-hole.[note: 331] Also, the nurse said she would visit Mr Loh every alternate day (see para 2 of her conditioned statement) and the daughter said that there was a neighbour on the same floor to whom the deceased would turn to for help.[note: 332] It was therefore unlikely that the deceased would seek the help of someone whom she did not know to lift Mr Loh, even if she might have seen Muhammad before.

487 As regards Muhammad's alleged second visit, it is not insignificant that Mr Loh's statement of 7 May 2005 said that the deceased had declined food from two male Malays. This was contrary to Muhammad's version and was in keeping with the deceased's wariness of strangers, especially if she had not sought Muhammad's help before. I add that Mamat Jurong's evidence was different from Muhammad's. For example, he said that Muhammad had entered the deceased's flat then but Muhammad said he had not. This might have been an innocent inconsistency but it illustrated how easy it would have been for Muhammad to provide "details" if there was no concrete evidence to contradict him.

488 I did not accept that Mamat Jurong was the second male Malay with Muhammad when Muhammad brought some food to the deceased's flat. I disbelieved Mamat Jurong and Ismil when each said that there was no discussion between them as to why Mamat Jurong's assistance was required. It would only be natural for them to talk about why his assistance was needed and in my view, they did do so. They said that they did not discuss the matter so as to try and avoid giving the impression that they had concocted Mamat Jurong's evidence together.

489 In my view, Mamat Jurong had concocted the evidence about going with Muhammad to bring food to a flat of an old Chinese lady. Likewise, Muhammad had concocted such evidence. It seemed

to me that the purpose of such evidence was two-fold. First, it was to bolster Muhammad's position that he had come to know the deceased before 6 May 2005 and could therefore gain entry to her flat on 6 May 2005 without the aid of an accomplice. Secondly, it was to distance Ismil from any involvement with the deceased.

490 It also seemed to me that it was unlikely that Muhammad had gone to the deceased's flat, a few days before 6 May 2005, to bring food out of pity, only then to rob her on 6 May 2005. It was more likely that he went to her flat, with Ismil, to find out a bit more about the occupants before proceeding with a plan for robbery and they learned that the deceased was wary of strangers as she did not accept the food brought. In any event, it was not necessary for me to make a finding as to who had brought food to the deceased's flat or the real motive for doing so.

491 This brings me to the manner in which entry was gained to the deceased's flat on 6 May 2005. Muhammad said during the trial that he had gained entry by using hand signals but this was not mentioned in his statements to CID. Indeed, in his statements to CID, he said it was Ismil who had spoken to the deceased. Muhammad also said in answer 27 of 10 June 2005 that he had never spoken or greeted the deceased before 6 May 2005. His version changed at trial. It seemed to me that Muhammad was saying that he had used hand signals after he had heard the evidence from the deceased's daughter that the deceased did not speak Malay or English. This allusion to hand signals was to give credence to the picture he was painting at trial, *ie*, that he was the only one involved and he was able to gain entry on his own.

492 As regards how entry was gained, I noted that Ismil's version had changed too. His statement of 7 May 2005 to ASP Bakar was that when he knocked on the main door of the deceased's flat, she opened the door as well as the grille. He asked her to lend money in Malay and she said she did not know him. However, as the deceased did not speak Malay and was wary of strangers, she would not have opened the door and gate as Ismil had suggested. In his statement of 11 May 2005 to the IO, he said he did not know how he managed to enter the deceased's flat. In his statement of 19 May 2005 to the IO outside the deceased's flat, Ismil said the deceased had opened the door but not the gate. He asked her to lend him money and she refused. He opened the gate and walked in. In his statement of 24 May 2005 to the IO, he said he spoke to the deceased in Malay and she replied in Malay.

493 However, after Ismil learned that Muhammad had confessed to being at the scene of the crime, Ismil's statement of 3 June 2005 to ASP Bakar said that Muhammad and he had gone to the deceased's flat and he (Ismil) had knocked on the door. The deceased opened the door and gate and Ismil rushed into her flat. He also said he had rushed in in his next statement to the IO of 9 June 2005. Apparently, Ismil did not know the details of what Muhammad had disclosed to CID. Yet, he chose to change his version as to how entry had been gained after he learned about the fact of Muhammad's confession. Interestingly, Mr Loh's statements of 7 May 2005 and 5 September 2005 said that the thief had come in after the deceased had opened the door and the gate, although Mr Loh said that the reason was to chase away wild cats.

494 Furthermore, there was consistency between Ismil's statements and Muhammad's statements in that the statements of both identified Ismil as the assailant. On the other hand, there might be a plausible explanation to this. It might be that Ismil had identified himself as the assailant because he thought his fingerprints had been found in the deceased's flat. He did not mention Muhammad because he did not want to incriminate Muhammad. When he eventually decided to disclose Muhammad's involvement, he decided to maintain his story and take the blame to protect his younger brother. In the meantime, Muhammad had decided to implicate Ismil as the assailant, since Ismil was after all present at the scene of the crime, to try and save himself (Muhammad).

495 Unlike the prosecution, I was not able to conclude that Muhammad was the assailant. However, I was able to conclude that both Ismil and Muhammad were involved. The confessions and broad consistency in Ismil's statements, including his knowledge of some details and his statements about Muhammad's role, and Muhammad's confessions all placed Ismil at the scene of the crime at the material time.

496 As for Muhammad, it was obvious that his belated confession at trial was to save Ismil. In view of that obvious purpose, I had to satisfy myself that he too was involved and that this was not an innocent person who was trying to save his elder brother because, with the admission of all the statements, both were likely to be doomed. I was satisfied from Ismil's confessions and Muhammad's, as well as the DNA evidence on the deceased's purse, that Muhammad too was at the scene of the crime at the material time. If Muhammad was innocent, Ismil, who had avoided incriminating him initially, would have protested about Muhammad's innocence instead of implicating him in his later statements. Furthermore, Muhammad's sketches disclosed his familiarity with the inside of the deceased's flat and, in particular, the position of the deceased's body lying on her side (see [309]), as she was actually found. This was no suggestion from CID but from his own knowledge.

497 I would add that notwithstanding the respective notices of alibi, no other evidence was led for Ismil or for Muhammad to establish that either was somewhere else at the material time. If there was such evidence for Muhammad, I did not think he would have said that he was the sole perpetrator. If there was such evidence for Ismil, it would have been adduced by his defence.

498 Although I was not able to find beyond a reasonable doubt who the assailant was, s 34 of the Penal Code (Cap 224, 1985 Rev Ed) did not require me to make such a finding. It states:

> When 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.

499 The purpose of s 34 is precisely to cover a situation when it is not known who, amongst the perpetrators, had struck the fatal blows. In certain circumstances, it makes all perpetrators liable for the fatality. In the Court of Appeal decision in *Lee Chez Kee v PP* [2008] 3 SLR 447 ("*Lee Chez Kee*"), V K Rajah JA said, at [119]: "The provision is regarded as having been crafted to address situations where it is difficult to prove the exact role of each of the wrongdoers and draw distinction between all those involved in acts in furtherance of a common intention." Thus, it is not necessary for a court to make a finding on all details leading to the murder such as who the mastermind was, if any, how entry was gained and, as I said, who inflicted the fatal blows . However, there must be sufficient evidence to enable the court to conclude what the common intention was, whether there was participation by all the accused persons and whether the fatal blows were inflicted to further that intention.

500 In *Lee Chez Kee*, Rajah JA summarised the requirements of s 34 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.

[emphasis in original]

501 I would add that in [137], Rajah JA had elaborated that "'the criminal act' refers to all the acts done by the persons involved which cumulatively result in the criminal offence in question. The acts committed by the different parties in the criminal action may be different but all must in one way or another participate and engage in the criminal enterprise."

502 There was no submission for Muhammad or Ismil on s 34 presumably because of the position that they had taken at trial, *ie*, that Ismil had not in any way participated in the criminal enterprise.

503 Notwithstanding Ismil's and Muhammad's belated attempt to retract their statements, I found that there was a plan between the two to rob the deceased.

504 Secondly, Muhammad said he killed the deceased because he did not want to be identified.[note: 333] I am of the view that whether Muhammad or Ismil was the assailant, each must have known that it was likely that the deceased would have to be killed to avoid any risk of identifying them. I did not accept Ismil's allegation that the killing was accidental. The numerous blows contradicted any such suggestion.

505 The fact that Mr Loh was not killed outright and that the nasogastric tube was removed did not suggest that there was no fear of identification but rather that the person who removed the tube had thought, rightly or wrongly, that it was not necessary to attack him as the deceased was attacked.

506 In my view, the accomplice of the assailant must also have been aware of the attack on the deceased in view of the small size of the deceased's flat, the numerous blows inflicted upon the deceased over a prolonged period of time and the presence of blood splatters in the kitchen facing the hall and the presence of her body in the hall. There would also have been sounds of the scuffle. Also, Mr Loh had said he heard the deceased groaning and so did Muhammad in some of his statements to CID. Indeed, while Ismil's and Muhammad's statements were identifying Muhammad as the accomplice only, there was no suggestion then that the accomplice was unaware that the deceased was being attacked. While Muhammad said in his cautioned statement that he did not expect Ismil to kill the deceased, he went on to say at trial that he (Muhammad) killed her to avoid identification as stated above.

507 Furthermore, there was no suggestion of any discussion between the two, after they left the deceased's flat, as to what had happened to the deceased or whether it was necessary to flee from #04-154 to avoid identification by the deceased. In my view, this was because both knew that the deceased had been silenced forever.

508 In the circumstances, I concluded that Mdm Tham was killed in furtherance of the common intention to commit robbery. Accordingly, Ismil and Muhammad would be guilty of murder under s 302 read with s 34 of the Penal Code unless there was some other defence.

509 Muhammad relied on diminished responsibility. Kok, Cheang and Chee, *Diminished Responsibility (with special reference to Singapore)* (Singapore University Press, 1990) refers to persons with mild mental retardations, ie, IQ of between 50-70, and states at p 82:

> In homicide cases subjects in this group would usually be found to be not insane but to be mentally abnormal and their responsibility for their actions substantially diminished.

510 It must be remembered that Muhammad and Ismil each has an IQ that is higher than the range in question although this is subject to a variation of five points higher or lower. More importantly, the above textbook statement is general in nature and does not necessarily apply to everyone within the applicable range. Otherwise, all that needs to be done by a defence counsel is to establish that an accused person's IQ comes within that range to succeed in establishing diminished responsibility. That is not the law.

511 The defence of diminished responsibility is found under Exception 7 to s 300 of the Penal Code. The exception states:

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

512 It was for the defence to establish diminished responsibility although its burden was to establish this on a balance of probabilities and not beyond any reasonable doubt.

513 In *Zailani bin Ahmad v PP* [2005] 1 SLR 356 ("*Zailani*") at [47], the Court of Appeal reaffirmed the three limbs that an accused person has to satisfy to establish diminished responsibility. They are:

(a) He was suffering from an abnormality of mind.

(b) Such abnormality of mind must have:

(i) arisen from a condition of arrested or retarded development of the mind; or

(ii) arisen from any inherent causes; or

(iii) been induced by disease or injury.

(c) Such abnormality of mind as in (b)(i) to (b)(iii) must have substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

514 In *G Krishnasamy Naidu v PP* [2006] 4 SLR 874 ("*K Naidu*"), the Court of Appeal stressed that while the three limbs or three-stage test remains a convenient way of drawing attention to the three critical aspects of the provision in many cases, it is a composite clause that must be read and applied as a whole. In any event, on the facts before me in the present case, it is unnecessary for me to say more about that decision.

515 I have already set out above the opinion of Dr Fones who was the defence psychiatrist for Muhammad (see [344]). His opinion was based on the premise that Muhammad was the assailant. In short, he was of the opinion that Muhammad's mind was affected by the Dormicum he had consumed. The Dormicum made Muhammad so bold that he decided to rob and kill and consequently inflicted numerous blows on the deceased. This constituted an abnormality of mind which substantially impaired his responsibility for the killing. In oral evidence, Dr Fones stressed the nature and extent of the blows as suggesting the impairment of Muhammad's judgment.[note: 334]

516 The prosecution psychiatrist who examined Muhammad was Dr Sathyadevan. As mentioned, he was of the opinion that Muhammad did not have an abnormality of mind.

517 Dr Sathyadevan elaborated that being high *per se* did not constitute an abnormality of mind. There must be psychiatric complications such as paradoxical rage or confused behaviour or hallucinatory experiences[note: 335] which Muhammad did not have. Also, Muhammad had not taken a quantity of Dormicum that morning which was more than his usual consumption. Dr Sathyadevan was also of the opinion that there was no substantial impairment of Muhammad's mental responsibility.[note: 336]

518 As for Ismil, Dr Ung's examination of him was not in respect of diminished responsibility. Dr Ung touched on this aspect only briefly in oral evidence. If Ismil was present when the robbery and murder was taking place but was not the assailant, it was Dr Ung's opinion that Ismil was suffering from diminished responsibility because of his low intellect and intoxication and his acquiescent personality.[note: 337]

519 Although Ismil's defence did not make any submission on diminished responsibility, I nevertheless considered whether he could avail himself of the same since it was raised in evidence, although briefly.

520 Dr Phang was the prosecution's psychiatrist who had examined Ismil. In summary, Dr Phang was of the opinion that a person would have to have very severe mental retardation in order for him to claim that he has an abnormality of mind. A low IQ was not sufficient. His adaptive functioning would have to be significantly impaired as already discussed[note: 338] (see [396] above) and, as mentioned, Dr Phang did not think that Ismil was impaired in his overall adaptive functions.

521 It was clear to me that neither Muhammad nor Ismil had suffered an abnormality of the mind. There was no psychiatric complication. Neither was either accused person's overall adaptive functions impaired, notwithstanding their consumption of Dormicum and their low IQ. In my view, each was street-smart and knew what was going on whether he was the assailant or not.

522 In addition, *Mental Disorders and the Law* (see [397]) states at p 91:

> The law on self-induced intoxication is quite clear. Self-induced intoxication whether by drink or drugs does not absolve the accused from criminal liability per se.

523 The authorities in support of such a principle are *Tengku Jonaris Badlishah v PP* [1999] 2 SLR 260 at [62] and *Zailani* at [60].

524 In the circumstances, I found that neither Muhammad nor Ismil was suffering from an abnormality of the mind. Nor could they avail themselves of the defence of diminished responsibility as a matter of law.

525 Accordingly, I found that the prosecution had proved beyond reasonable doubt that Ismil and Muhammad were liable for the murder of the deceased that was committed in furtherance of their common intention to rob her and I convicted and sentenced them according to the law.

[LawNet Admin Note: Schedule A and Schedule B are viewable only by LawNet subscribers via the PDF in the Case View Tools.]

[note: 1] Notes of Evidence ("NE") 918

[note: 2] NE 731 and 746

[note: 3] NE 1184-87

[note: 4] NE 732-33

[note: 5] NE 324

[note: 6] NE 332,336,736

[note: 7] NE 735,797

[note: 8] NE 736

[note: 9] NE 922

[note: 10] NE 749

[note: 11] NE 1071,1168-69

[note: 12] NE 737, 749

[note: 13] (see, for example, NE 753,755-56,767,769,773,776-77,1051,1055,1061,1064,1107,1109)

[note: 14] (see, for example, NE 769, 774, 777)

[note: 15] NE 301-02

[note: 16] NE 302

[note: 17] NE 304

[note: 18] NE 307

[note: 19] NE 233-35

[note: 20] NE 947

[note: 21] NE 947-49

[note: 22] NE 241

[note: 23] NE 240

[note: 24] NE 257

[note: 25] NE 423,432,755

[note: 26] NE 756

[note: 27] NE 756

[note: 28] NE 965

[note: 29] NE 356

[note: 30] NE 351

[note: 31] NE 340-41,353

[note: 32] NE 368

[note: 33] NE 354

[note: 34] NE 355

[note: 35] NE 986 and 991

[note: 36] NE 756-57,977,988

[note: 37] NE 757,987

[note: 38] NE 758

[note: 39] NE 982, 984

[note: 40] NE 984-86

[note: 41] NE 989

[note: 42] NE 471

[note: 43] NE 477

[note: 44] NE 487,543

[note: 45] NE 471,545

[note: 46] NE 433

[note: 47] NE 994

[note: 48] NE 995

[note: 49] NE 760-61

[note: 50] NE 393 and 395

[note: 51] NE 404

[note: 52] NE 403

[note: 53] NE 762-64, 1000-01, 1007

[note: 54] NE 1003-04

[note: 55] NE 764

[note: 56] NE 999

[note: 57] NE 1000

[note: 58] NE 1011

[note: 59] NE 370-71

[note: 60] NE 385

[note: 61] NE 604-05

[note: 62] NE 612-14

[note: 63] NE 605

[note: 64] NE 1020

[note: 65] NE 767,1016

[note: 66] NE 765-66

[note: 67] NE 1018

[note: 68] NE 1021

[note: 69] NE 765-66, 1022

[note: 70] NE 766

[note: 71] NE 767

[note: 72] NE 1031

[note: 73] NE 768

[note: 74] NE 798

[note: 75] NE 1037-38

[note: 76] NE 1038-40

[note: 77] (see for example, NE 771-2 and 776-7)

[note: 78] NE 1044

[note: 79] NE 563

[note: 80] NE 495-96, 552

[note: 81] NE 597

[note: 82] NE 621, 623-24

[note: 83] NE 768-769

[note: 84] NE 771-72

[note: 85] NE 1045

[note: 86] NE 1048

[note: 87] NE 1049

[note: 88] NE 1056-57

[note: 89] NE 1051, 1055

[note: 90] NE 445

[note: 91] NE 645

[note: 92] NE 646

[note: 93] NE 648

[note: 94] NE 1061

[note: 95] NE 773, 1061

[note: 96] NE 1062

[note: 97] NE 501

[note: 98] NE 501

[note: 99] NE 597

[note: 100] NE 566 and 624

[note: 101] NE 774,1064

[note: 102] NE 775

[note: 103] NE 503

[note: 104] NE 598

[note: 105] NE 571-74

[note: 106] NE 776-77

[note: 107] NE 524

[note: 108] NE 625

[note: 109] NE 506

[note: 110] NE 506 and 576

[note: 111] NE 778-79

[note: 112] NE 780

[note: 113] NE 599

[note: 114] NE 577, 627

[note: 115] NE 510

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Schedule A

Statements of Ismil Bin Kadar

S/N	Date	Time	Duration	Location	Recorder	Interpreter (if any)	Exhibit/PIB No
1	07/05/05	11.10am - 11.20am 11.30am – 11.50am	10 mins 20 mins	Carpark of Blk 185 Boon Lay Ave Briefing room at Jurong West NPC	SSI Zainal Abidin	None	P152 & P152A at PIB 133 & 134 P153 & P153A at PIB 135 & 136
2	07/05/05	12.45pm - 1.20pm	35 mins	VSC Office, Jurong West NPC	ASP Bahar Bakar	None	P154 at PIB 149 & 150
3	07/05/05	8.50pm - 9.45pm	55 mins	Room 4, PCC lock-up	Insp Ang Leong Peng	Mdm Sapiahtun	P156 at PIB 170
4	11/05/05	2.30pm – 4.45pm	2 hrs 15 mins	Room 7, PCC lock-up	IO Raymond Tan	Mdm Sapiahtun	P183 at PIB 383 – 385
5	17/05/05	10.15am -12.30pm 2.35pm – 4.30pm	2 hrs 15 mins 2 hrs 5 mins	Room 6, PCC lock-up Room 6, PCC lock-up	IO Raymond Tan “	Mdm Sapiahtun “	P187 at PIB 389 – 393
6	18/05/05	3pm – 5.15pm	2 hrs 15 mins	Room 6, PCC lock-up	IO Raymond Tan	Mdm Sapiahtun	P188 at PIB 394 – 397
7	19/05/05	12pm – 1.15pm 1.15pm – 1.25pm	1 hr 15 mins 10 mins	Outside deceased’s flat Outside #04-154	IO Raymond Tan	Mdm Sapiahtun	P189 at PIB 400 – 401 and P189A (loose)
8	20/05/05	3.35pm – 4pm	25 mins	#04-154	IO Raymond Tan	Mr Iskandar Goh	P190 at PIB 404 – 45 and P190A (loose)
9	24/05/05	2.30pm – 4.30pm	2 hrs	Room 6, PCC lock-up	IO Raymond Tan	Mr Iskandar Goh	P191 at PIB 406 – 409
10	03/06/05	6.15pm – 7.15pm	1 hr	Interview room, SIS office	ASP Bahar Bakar	None	P155 at PIB 151 – 152
11	09/06/05	10.30am – 12.55pm 4.10pm – 6.25pm	2 hrs 25 mins 2 hrs 15 mins	Room 6, PCC lock-up Room 7, PCC lock-up	IO Raymond Tan “	Mdm Sapiahtun “	P195 at PIB 427 - 433

NPC : Neighbourhood Police Centre
PCC : Police Cantonment Complex
PIB : Preliminary Inquiry Bundle
SIS : Special Investigation Section

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Schedule B

Statements of Muhammad Bin Kadar

S/N	Date	Time	Duration	Location	Recorder	Interpreter (if any)	Exhibit/PIB No
1	30/05/05	6.00pm – 8.05pm	1 hr 5 mins	Interview room B, SIS office	SSI Mazlan Bin Shariff	None	P157/PIB 177-179
2	30/05/05	9.00pm - 10.35pm	1 hr 35 mins	Interview room B, SIS office	SSI Ravindra Subramaniam	Mdm Masdiana	P158/PIB 185-188
3	30/05/05	11.00pm – 11.30pm	30 mins	Interview room C, SIS office	IO Raymond Tan	Mdm Masdiana	P192//PIB 410
4	31/05/05	2.40pm – 3.25pm	45 mins	Room 7, PCC lock-up	Insp Ang Leong Peng	Iskandar Goh	P292
5	04/06/05	2.05pm – 7.00pm	5 hrs 5 mins	Room 6, PCC lock-up	IO Raymond Tan	Mdm Masdiana	P193/PIB 413, 420, 421 & 422
6	07/06/05	2.25pm – 5.30pm	3 hrs 5 mins	Room 6, PCC lock-up	IO Raymond Tan	Mdm Masdiana	P194/PIB 423
7	10/06/05	2.40pm – 4.45pm	2 hrs 5 mins	Room 13, PCC lock-up	IO Raymond Tan	Mdm Masdiana	P196/PIB 434
8	13/06/05	3.20pm 4.00pm	- -	Outside deceased's flat Inside deceased's flat	IO Raymond Tan "	Mdm Masdiana "	P197/PIB 438 P197/PIB 439
9	14/06/05	11.15am – 12.40pm	1 hr 25 mins	Room 6, PCC lock-up	IO Raymond Tan	Mdm Masdiana	P198

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