

Public Prosecutor v Tan Chor Jin
[2007] SGHC 77

Case Number : CC 30/2006
Decision Date : 22 May 2007
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Edwin San and Chew Chin Yee (DPPs) for the Prosecution; Accused in person
Parties : Public Prosecutor — Tan Chor Jin

22 May 2007

Judgment reserved.

Tay Yong Kwang J:

Introduction

1 The accused (referred to by the media as the “One-eyed Dragon” because he has an opacity over the cornea of his right eye, which became blind some seven or eight years ago), is now 41 years old. He appeared in person in this trial, having discharged counsel before the preliminary inquiry and having refused legal representation by counsel assigned to him by the Registrar of the Supreme Court. At the commencement of the trial, the accused confirmed that he did not wish to have legal representation and that he wanted to conduct the trial on his own. He spoke mainly in Mandarin but would switch to simple (and often unstructured) English every now and then.

2 The trial involves the following amended capital charge under the Arms Offences Act (Cap 14, 1998 revised edition):

You, Tan Chor Jin,

on the 15th day of February 2006, at Blk 223 Serangoon Avenue 4 #02-183, Singapore, did use an arm, namely a Beretta, 0.22 Calibre pistol by discharging 6 rounds from the said pistol, with intent to cause physical injury to one Lim Hock Soon, male/40 years, and you have thereby committed an offence punishable under section 4(1) read with section 4(2) of the Arms Offences Act, Chapter 14.

3 The said Lim Hock Soon (“the deceased”) suffered five gunshot wounds in various parts of his body. He was found in a prone position and was pronounced dead in the flat stated in the above charge (“the Serangoon flat”) by a paramedic who was called to the scene subsequent to the shooting incident which took place at about 7am that morning.

4 The Serangoon flat is located in a public housing estate. The deceased lived with his wife, their daughter and a female Indonesian domestic worker in that flat. The flat has three bedrooms. On one side was the master bedroom occupied by the deceased and his wife. On the other side was the bedroom occupied by their 13 year old daughter (“S’s bedroom”). The bedroom in between was used by the deceased as a study room (“the study room”). The study room contained (among other things) a piano, a computer on a table, a safe, a television, cabinets and three chairs (a black metal one with a cushion seat, a wooden one and a black swivel chair). The shooting incident took place in this room and it was here that the deceased was found lying dead on the floor.

The prosecution's case

5 Forty seven witnesses testified for the prosecution. Lim Choon Chwee ("Ah Chwee") was the accused's childhood friend. The accused was known as Tony Kia to his friends. The two of them used to belong to the same secret society. Ah Chwee held the accused in high regard.

6 In the early hours of the morning of 15 February 2006, one James Tan informed Ah Chwee that the accused was looking for him. Ah Chwee then went to James Tan's flat and drove James Tan's car, a Nissan Cefiro with the registration number SFY 4444 Z ("the Nissan Cefiro"), to the accused's flat at Block 247 Hougang Avenue 3 at about 3am. There, the accused asked Ah Chwee to drive him to Block 223 in Serangoon Avenue 4 ("the deceased's block"). The accused sat in the front passenger seat. He was carrying a black clutch bag.

7 They arrived at the carpark of the deceased's block about 15 minutes later. There, the accused pointed out two cars to Ah Chwee, both bearing registration number plates "9699". The accused alighted from the car and walked towards the deceased's block. Ah Chwee remained in the car. Some ten minutes later, the accused returned to the car and asked Ah Chwee to drive him to James Tan's ground floor flat at Block 515 Hougang Avenue 10. Along the way, the accused asked Ah Chwee in Hokkien, "Where can a Rolex watch be robbed?". When Ah Chwee asked him why, the accused said luck was not with him and he was facing financial problems.

8 When they arrived at James Tan's flat at around 4am, the accused placed his black clutch bag beneath the front passenger seat before alighting from the car. They then spent the next two hours or so watching some football game in the flat.

9 At about 6am, the accused asked Ah Chwee to drive him to the deceased's block again. When they arrived at the carpark there the second time, the accused took the black clutch bag and then alighted. The accused was wearing a black t-shirt and black pants and had a black cap on. He told Ah Chwee to wait for him in the car near a school opposite the deceased's block. Ah Chwee complied.

10 About half an hour later, the accused returned to the car, appearing nervous and more excited than usual. He was carrying a white plastic bag which appeared to be bulky and his black clutch bag. He instructed Ah Chwee to drive to "the river". When Ah Chwee asked for clarification, he told him to take the route to James Tan's flat.

11 While they were travelling along Upper Serangoon Road, the accused pointed to a canal on the other side of the road and told Ah Chwee to do a U-turn. Ah Chwee did so and then stopped the car. The accused went out of the car with his black clutch bag but not the white plastic bag and walked down a path leading to the canal. He returned some five minutes later and asked Ah Chwee to drive to James Tan's flat again.

12 When they arrived, the accused left the white plastic bag in the car and went into the flat with Ah Chwee. There, the accused woke up his friend called Moh Tang. The three of them then returned to the carpark where the accused transferred the white plastic bag from the Nissan Cefiro to a car bearing a Malaysian registration plate. Before the accused left in the latter vehicle with Moh Tang as the driver, he told Ah Chwee to read the evening's newspapers.

13 From the evening's newspapers, Ah Chwee learnt about the shooting incident at the deceased's block and knew that the accused must have been involved in it. He then decided to surrender himself to the police the next day.

14 On 16_ February 2006, Ah Chwee led the police to the canal where the accused was the day before. He learnt subsequently that a gun was recovered by the police from the canal.

15 Under cross-examination, Ah Chwee confirmed that the accused normally bought hard liquor for his friends and was a drinker too.

16 James Tan also knew the accused as Tony Kia. They were from the same secret society at one time. On the night of 14 February 2006, James Tan returned to his flat, which functioned as a small temple as well, and found the accused and Moh Tang, a Malaysian, there. They had supper together. The accused asked James Tan to solicit donations from his friends for a Taoist temple in Johor Baru. James Tan contacted Joseph Liew who told him that he was having drinks with some friends at a coffee shop at Braddell Road. The three men then left in a Malaysian registered car driven by Moh Tang to join Joseph at the coffee shop, arriving there past midnight.

17 At the coffee shop, the accused asked James Tan to contact Ah Chwee. The accused also insisted on showing Joseph Liew a tiger hide and some religious pendants which he wanted to sell. At about 2.30am, they left the coffee shop for the accused's flat together with Joseph Liew. The accused brought Joseph Liew up to his flat while Moh Tang drove James Tan home. Ah Chwee was already at James Tan's flat. Ah Chwee then took the car keys and drove the Nissan Cefiro to go and meet the accused.

18 Sometime after 3.30am, the accused and Ah Chwee returned to James Tan's flat to watch the football match on television. The accused asked James Tan to place a \$500 bet for the match between the English football clubs Liverpool and Arsenal. After watching the match, the accused told Ah Chwee to follow him. The two of them then left the flat at about 6am on 15 February 2006.

19 James Tan went to sleep a little later, waking up at about 3pm. By then, the accused, Moh Tang and Ah Chwee were not in his flat anymore. At about 9pm, James Tan received a telephone call from the accused in Malaysia. The accused asked him whether he had watched the news on television. James Tan then turned on the television to watch the Chinese news on channel U. He learnt about the shooting incident. From the description given about the killer, James Tan suspected that the killer was the accused. He asked the accused about this, adding that such crimes carried the death penalty. The accused merely laughed and told him to place bets on another football match. Some hours later, Ah Chwee told James Tan he wanted to surrender to the police as he was uneasy that someone had been killed. When the accused spoke to James Tan again at about 5pm on 16 February 2006, James Tan told him that Ah Chwee had gone to the police. The accused then told him to keep him informed of any developments.

20 Under cross-examination by the accused, James Tan confirmed that they had started drinking alcohol between 8pm and 9pm on 14 February 2006 until the morning. James Tan also said that he heard that the accused had made a RM100,000 or so donation to a temple in Malaysia sometime in 2005/2006. The accused had also passed James Tan S\$30,000 on one occasion to purchase a religious pendant. It was not the accused's nature to borrow money from others. Upon his recall at the request of the accused, James Tan confirmed that the accused had driven a Mercedes 240 and, after that, a BMW in Malaysia. He also said that the accused had, at some time, 4 shops in Malaysia selling Chinese medicine.

21 Joseph Liew, a director of a construction company, testified that the accused did drink beer at the coffee shop at Braddell Road. That was the first time that he was introduced to the accused. He went to the accused's flat that early morning as the accused was quite insistent on showing him the tiger hide. When he declined to buy it at the offered price of S\$15,000, the accused asked him for a

loan but did not indicate how much he wanted. Joseph Liew told him he could not get the money at that hour. He then left the accused's flat without lending any money to the accused, with the accused insisting on Joseph Liew being sent home in Moh Tang's car. To Joseph Liew's surprise, Moh Tang drove to his home without being told about the address.

22 Joseph Liew learnt about the shooting incident subsequently that day but thought nothing of it until he received a call from James Tan who asked him to watch the news. When he did so, he saw the photographs of the accused and Moh Tang being flashed on the screen. Feeling uneasy because he had been with them only a few hours before the shooting incident, he decided to go to the police.

23 Koo Kim Seng stated that he received a call from the accused at about 10.30pm on 14 February 2006 asking him to go to the coffee shop at Braddell Road as the accused wanted to buy him supper. He drove his taxi there at about 1am on 15 February 2006. The accused informed Koo that he had lost a lot of money betting on football and horses. Koo confirmed that the accused had been drinking alcohol as he "got some smelly".

24 Toh Wee Khoo was the deceased's close friend. He was introduced by the deceased to the accused sometime in 2002. In 2003, Toh accompanied the deceased to Johor Baru to ask the accused to repay a S\$30,000 interest-free loan. The accused asked the deceased to give him more time to raise the funds. The deceased acceded to that request. On 15 February 2006, at about 3.22am, the deceased called Toh and told him that the accused had gone to the Serangoon flat earlier to ask for financial assistance. The deceased told Toh that he was rather shocked that the accused knew where he was living. Toh then advised the deceased not to speak to the accused at the Serangoon flat but to discuss the matter with the accused later in the day. The deceased agreed. That was the last time Toh spoke to the deceased. Later that morning, Toh was informed by the deceased's wife about the shooting incident. He went to meet her at the Serangoon Neighbourhood Police Centre. From the description given by her about the gunman (that one of his eyes was abnormal) and recalling the telephone conversation he had with the deceased earlier that morning, he suspected that the gunman was the accused and told the police so.

25 Yap Ing Thien, who lived in a ground floor flat in the deceased's block, saw the accused behaving rather suspiciously at about 6.35am on 15 February 2006. He saw the accused walking across the carpark to the opposite block of flats to look towards the deceased's block. As Yap drove out of the carpark a few minutes later, he saw the accused smoking and looking towards the deceased's block. When he looked into his car's rear view mirror, he noticed that the accused was walking back to the deceased's block. When he returned home at about 8am, he learnt about the shooting incident and so informed the police about what he had witnessed earlier.

26 The deceased and his wife, Joey, returned home at about 3am on 15 February 2006. Joey went to sleep in the master bedroom while the deceased watched television in the living room. At about 6.55am, S (her name is not used because of s 35 of the Children and Young Persons Act), the deceased's 13 year old daughter, was sitting on the doorsteps of the Serangoon flat, putting on her shoes to go to school. Suddenly, the accused rushed in and pushed her from the front. He told S rudely that he was there to rob. He had a knife in his right hand and a gun in his left. He also had a black clutch bag at his armpit.

27 The deceased was sleeping in the living room while Joey was sleeping in the master bedroom. Risa, the female Indonesian domestic help, was walking toward S from the flat's kitchen. The accused used his right hand to wake the deceased up. When the deceased asked the accused what he wanted, the accused replied (in Hokkien), "I have a gun and do you want me to shoot?" The deceased asked him not to do so. The accused then told the deceased, S and Risa to go to the study

room. He then instructed Risa to go and wake Joey up. The accused then herded all of them to the master bedroom. There, the accused told Joey in Hokkien to wake up. When she awoke, he told her to take out all the valuables and to put them into a blue denim bag. He then told her to put the blue denim bag into a bigger white plastic bag. At one point, the accused pointed the gun at the deceased and threatened him in Mandarin, "Talk again, talk again". The accused picked up the filled white plastic bag and then asked for ropes. When told that they had none, the accused asked the deceased to get some towels from the kitchen.

28 When the deceased returned to the master bedroom with some towels, the accused asked him to tie the three ladies up. The deceased proceeded to tie Risa's hands at the front and also her legs. He then tied S's and Joey's hands at the front. The accused and the deceased then went to the study room. The three ladies heard arguments between the two men. The accused then returned to the master bedroom and told them to go to the study room.

29 In the study room, the accused told the deceased in Mandarin to open the safe and then to "put in". The deceased complied. The deceased later handed Joey a television cable and placed his hands in front of his body. Joey could still move her tied hands somewhat and managed to tie the deceased's hands at the front. As she had difficulty tightening the knot, she also used her teeth to pull the ends together. The accused next told them to go to separate rooms. Joey pleaded with him to allow her to be with S. He agreed. Joey and S then went back to the master bedroom while Risa went into S's bedroom. The accused also went into the master bedroom and told mother and daughter to sit down on the floor. After they had complied, he went out of the room. The doors of all three bedrooms were open.

30 A little later, Joey and S heard a loud bang and the deceased crying out, "Ah". Joey shouted "Don't! Don't!" in Mandarin but they heard five more bangs. The accused then returned to the master bedroom and told Joey in Mandarin that it was her husband who had gone too far. Joey pushed S downwards and held her close. The accused then walked towards the door of the bedroom and said in Mandarin that he would spare them but warned them not to recognise him or he would kill the whole family. After that, he left the Serangoon flat with the white plastic bag, slamming the metal grille gates in the process.

31 Joey telephoned the deceased's sister who lived a few units away in the deceased's block and then ran out of the master bedroom. She called for Risa and she emerged from S's bedroom. Joey then went into the study room where she saw the deceased lying on the floor in a pool of blood. She could not rouse him. When the deceased's mother and sister arrived, Joey asked the sister to call the police. The electrical circuit in the Serangoon flat apparently tripped after that, before the police and the ambulance arrived.

32 Under cross-examination, Joey was asked by the accused how he had pointed the gun at her. She demonstrated with her left arm bent at a practically right angle, with the imaginary gun pointed forwards. The accused also asked S how he had pointed the gun at the deceased when he was trying to wake him up. S replied that the gun was pointed downwards at her father who was sleeping on a mattress on the floor in the living room.

33 Risa is 22 years old. She did not testify at the preliminary inquiry as she had returned home to Indonesia then. She had been working for the deceased's family from May 2005. She could understand simple Mandarin and Hokkien words. She would normally accompany S to her school who was in the vicinity of the Serangoon flat. On 15 February 2006, as the two of them were about to leave for S's school, she saw the accused standing inside the living room with a small knife and a piece of yellow cloth in his right hand and a small gun in his left hand. The accused warned them not to do anything.

34 Risa said that although the deceased tied her hands and legs, the knots were not very tight and she could still move her limbs somewhat. Hence, she was able to walk slowly to the study room when told to do so. After Joey and S were directed back into the master bedroom, the accused returned to the study room and pointed the gun at Risa's forehead. Risa pleaded with him in English, "Uncle, please don't kill me. I here working". The accused said he knew that. The deceased also pleaded with the accused not to harm Risa. The accused then pointed the gun at the deceased's forehead. The deceased knelt down and begged for his life. At that stage, the accused told Risa to go to S's room and to keep quiet inside. She did so and sat on the raised platform in that room with the room door ajar.

35 Risa could hear the accused and the deceased talking but could not make out the words. After some time, there was complete silence. She wondered whether the accused had left the Serangoon flat. She then stood up and walked slowly to the entrance of S's room. She squatted down when she was at the entrance of S's room and hid behind the door to peek into the study room. The accused was standing with his back towards Risa. The deceased, with his hands still tied at the front, was standing facing the accused. There was a black chair behind the deceased. The accused then raised his left hand and pointed the gun at the right side of the deceased's face. Holding the gun very close to the deceased's face, the accused discharged one shot. The deceased cried out in pain and fell backwards against the black chair behind him. Risa was terrified and retreated back into S's room to hide. At the same time, she heard the sound of the chair toppling onto the floor followed by more gunshots.

36 After that, the accused stood at the entrance of S's room but did not go in. A little later, Risa heard the metal grille gate being slammed. She then heard Joey speaking to someone on the telephone in the master bedroom. Joey asked her to check on the deceased. Risa then loosened the towels around her hands and legs and went with Joey into the study room.

37 Risa recalled that one of the accused's eyes seemed damaged (she used the Malay word "rosak") because it was whitish but she could not remember which eye it was. She was cross-examined at some length by the accused. She said the black chair that she referred to was the one shown in photograph marked P46, which was a black metal chair with a cushion seat. The photographs taken of the study room that morning showed the black chair toppled over with its seat dislodged and lying on the floor a short distance away. When asked how she could be hiding behind the door in S's room if it was ajar, Risa clarified that she meant that she was at the right side of the door frame, as one looks out from that room. The accused invited the court to visit the Serangoon flat to see if one could peek into the study room in the way described by Risa. I declined to do so as the photographs of the flat and the sketch plan (P176 - although not drawn to scale) were sufficiently clear.

38 Risa was also questioned on why she could recall which side of the deceased's face was shot but not which of the accused's eyes was damaged. She replied that she had promised herself that if the deceased ("my Sir") should die, she would help him and reiterated that she did witness the first shot. The accused then alleged that Risa was lying in order to help her former employer and to cause harm to the accused. Risa denied that. She also denied having a poor recollection about the shooting incident. She did not detect any alcohol smell coming from the accused. In reply to the court's question, she added that the lights in the study room were switched on during the incident but not those in the living room. Although it was a little dark at that time of the morning, she could see clearly in the living room.

39 The police who arrived after the shooting incident found six cartridge cases and one spent bullet in the Serangoon flat. Five of the cartridge cases and the spent bullet were in the study room

while one cartridge case was found in S's room.

40 On 16 February 2006, Ah Chwee led some police officers to the canal where he had driven the accused to in the Nissan Cefiro in the morning of 15 February 2006. Naval divers were called to the scene. It was low tide then and the water was muddy. One of the divers, Amos Tan, spotted a pistol protruding out of the mud and handed it over to the police officer overseeing the search operation. The weapon was a Beretta 0.22 Calibre pistol. It was rendered safe and found to have one round in the chamber and one round in the magazine. The pistol was subsequently cleaned thoroughly as it had heavy rust deposits, probably caused by its exposure to seawater.

41 David Loo, a weapon specialist in the Force Armament Branch, testified that visual inspection and functionality checks were conducted to assess the condition of the weapon. He found the trigger pull for single/double action mode was within the requirement of between 4lbs to 12lbs respectively. Single action mode meant that the hammer had already been cocked and it would be easier to pull the trigger. The weapon had no automatic or semi-automatic function selection which would have allowed it to discharge more than one round at a time. There were no stoppages or malfunction observed during the test firing conducted using the police's 0.22LR ammunition. The magazine, which was also rusty and had to be thoroughly cleaned, was found to be serviceable and in good working condition. The weapon could hold a total of eight rounds – one loaded in the chamber with seven in the magazine. It was unlikely to fire if it was accidentally dropped because of a built-in safety feature (which was found not to have been tampered with). When asked by the accused whether a fully loaded Beretta could fire if one did not squeeze the trigger, David Loo replied that it could not. This was so even if the hammer was cocked.

42 On 25 February 2006, the Singapore police was informed that the accused had been arrested in Kuala Lumpur. A Rolex watch was found on the accused. This was confirmed by Joey in court to be the deceased's watch. On 1 March 2006, the accused was brought back to Singapore by the police.

43 An autopsy performed on the deceased by Dr Teo Eng Swee, a consultant forensic pathologist, showed the cause of his death to be due to multiple gunshot wounds. There were five such wounds found, one each at the left thigh, left arm, the back, the right cheek and the right temple. There were no exit wounds found. Five bullets were recovered from the deceased's body. Dr Teo was unable to tell the sequence of the gunshots. However, he opined that the shot to the right temple would have been instantaneously fatal or death would have resulted within seconds. It was therefore likely to have been the final shot as there was evidence of a struggle (such as the toppled chair and the splatters of blood on the floor) and the deceased would not have been able to move about anymore if that had been the first shot. The fact that there was no exit wound for this shot was consistent with the deceased's head being pressed against a hard surface like a wall or a floor. The position of the body as he found it at the scene was also consistent with this analysis (the left side of the deceased's face was on the floor). The shot to the back was potentially fatal. The resulting injury to the lung would cause blood coughed out by the deceased to present a bubbly appearance. The other three shots were potentially survivable but, in the absence of medical attention, such wounds would cause the deceased to bleed to death. The wound to the right cheek was surrounded by an area of searing 1.4cm in diameter and an area of powder tattooing of 3cm in diameter. The wound to the right temple had an area of powder tattooing of around 6cm in diameter.

44 Asked by the accused about the other injuries noted on the deceased's body, Dr Teo said that the bruising around the left eye was probably the result of blunt force trauma, such as a punch. The injuries on both knees would indicate that the deceased fell to his knees at some point. Dr Teo also said that it was possible that the shot to the right cheek was suffered when the deceased was lying in a prone position as shown in photograph P15. Based on the appearance of powder tattooing caused

by the intense heat of gunpowder, he opined that the shot to the right cheek was fired closer to the face than the fatal shot to the right temple.

45 Vicky Chow, a forensic scientist at the Criminalistics Laboratory, examined the cartridge casings, the bullets, the items in the Serangoon flat and the Nissan Cefiro involved. She explained in her reports that a particle containing the three elements of lead, barium and antimony was unique to gunshot residues ("GSR"). Particles containing combinations of these three elements are typical of, but not unique to, GSR. When a large quantity of GSR was found, that indicated proximity to a discharging firearm or physical contact with a surface having GSR adhering to it. Fragments and particles containing lead with traces of antimony were consistent with bullet material. She found GSR in various parts of the study room and also in the Nissan Cefiro. A black swivel chair in the far corner of the study room, with a shirt and a belt draped over the backrest, had a slight tear at its left armrest. Vicky Chow's examination revealed that the bullet found in the Serangoon flat had some black polyvinyl chloride-based material which was similar to that of the black swivel chair. This indicated that the said bullet had come into contact with the black swivel chair. This was buttressed by the finding that GSR was found at the tear on the armrest. She was, however, unable to tell the distance of the gunshot from the said swivel chair and whether the bullet was on an upward or downward path, although if it were on an upward path, it would be more difficult for GSR to be deposited on it and GSR was found on that bullet.

46 She testified that the six cartridge casings found in the Serangoon flat were all of 0.22 calibre and bore identical markings to cartridge casings test-fired from the pistol in question. That meant that the six cartridge casings were fired from the pistol. The bullet found in the said flat and the five recovered from the deceased's body were of the same calibre. The bullet found in the thigh of the deceased was consistent with having been fired from the said pistol. The one found in the study room had partial markings for comparison and could have been fired from the same pistol. As a result of the damage suffered by the other four bullets found in the deceased's body, no lands and grooves were found to be suitable for bullet comparison.

47 Lim Chin Chin, a senior forensic scientist, went to the Serangoon flat with Vicky Chow at about 9.30am on 15 February 2006 to conduct forensic investigation. They examined the scene and the injuries on the deceased's body, noting, among many other matters, that a black cable was found around the left wrist of the deceased who was lying on the floor in a prone position near the doorway of the study room. Ms Lim concluded from all the forensic evidence that the shots at the deceased's right temple and left arm were fired at close ranges with muzzle-to-target ("MTT") distances of 10 to 25cm, resulting in the presence of powder tattooing patterns of 6 to 8cm in diameter around the two small circular wounds. The shot at the right cheek was likely to have been fired at a MTT distance of less than 10cm because of the presence of searing and a powder tattooing pattern of about 3cm in diameter. The MTT distance for the wounds at the back and at the left thigh was estimated at between 100 and 150cm.

48 The toppled metal chair with its dislodged seat indicated that some form of activity had occurred in the study room. One shot missed the deceased with the bullet landing on the floor near the black swivel chair. A chipped area on the floor was found beside that bullet. The location and size of this chipped area suggested that it could be a ricochet crease. The deceased's legs and left arm were relatively free of bloodstains and no blood flow pattern due to gravitation was found from the gunshot wounds at the left arm and left thigh. This meant that after the deceased was shot at these parts of his body, he did not remain in an upright position for a long period of time. Blood from these wounds was unlikely to have dripped onto the floor of the study room. The shot to the right temple was likely to have been the final shot fired as the examination of the bloodstain patterns on the deceased's shirt showed an absence of blood flow from the right temple to the shoulder which would

have been expected if this shot had been one of the earlier ones.

49 From the significant presence of GSR at the computer table, the table near the window, the cabinet along the wall with the doorway and the doorway itself, Ms Lim opined that the pistol had been discharged near these objects. She also noted that the pistol in question, when held in the conventional manner with the gun sight upright, ejected cartridge cases mostly to the right.

50 Dr Tommy Tan, a forensic psychiatrist at Woodbridge Hospital, examined the accused on eight occasions between March and May 2006 while the latter was in remand. He also interviewed the accused's first wife, Seow Fung Fung, and his common law wife, Lian Yee Hwa, on 28 March 2006. Dr Tommy Tan noted that the accused was left-handed and had a full scale intelligence quotient of 91, which is in the average range of intelligence. The accused did not have a lowered memory and intellectual functioning although he had some difficulties with visual recall. He did not have defects in his ability to plan.

51 The doctor opined that the accused had recurrent depressive disorder, current episode moderate, which was characterised by a depressed mood, feelings of frustration, poor sleep and appetite, increase in weight and irritability. His wives, who did not know about each other until after his arrest, had observed that he had a change in behaviour for about one year. When examined, the accused had a depressed mood and affect and mild psychomotor retardation, which meant that the accused's mental response was generally slow. He had recurrent depressive disorder at the time of the shooting incident but was not of unsound mind. There were no motor deficits and no neuropsychological deficits as a result of the small area of hypodensity in the superior (right) parietal lobe of the accused's brain. Dr Tommy Tan also found the accused fit to plead, capable of making his defence, able to instruct counsel and capable of following court proceedings.

52 Dr Tommy Tan added that the accused had told him that he had been drinking alcohol and was high before the shooting incident. He had taken this into account in his report. He opined that intoxication would increase the inability to control oneself and impulsiveness. He agreed under cross-examination that the accused had told him that the deceased had swung a chair at him.

53 In a statement under s 122(6) of the Criminal Procedure Code made on 2 March 2006 made to ASP David Ang, in response to a charge of murder of the deceased under s 302 of the Penal Code, the accused stated that he had no intention to commit murder, his intention was to talk and negotiate with the deceased and the reason why he "fired a shot was because he attacked me with a chair suddenly". In addition, he also wrote out two statements in the Chinese language in the presence of ASP Abdul Halim Osman on 25 February 2006 and 10 March 2006 (P196 and P204, with translated versions at P190 and P191).

54 In the first handwritten statement, he claimed that while having a meal in Geylang at about 3am one morning, he happened to see the deceased who told him to watch out as he (the deceased) would get someone to go after him. After learning that the deceased had indeed done so, the accused decided to buy a weapon for self defence. He then related the incident of 15 February 2006, stating that he had gone to the Serangoon flat at 3am to negotiate with the deceased and to ask him "to give me a way out". However, the deceased replied that he had already given instructions on how to deal with the accused. At 6am, he returned to the said flat telling the family that he was there to look for money because the deceased had forced him into doing that. In the study room, he tried to negotiate with the deceased again but the deceased suddenly grabbed a chair to attack him. The accused panicked and opened fire. After that, he told Joey that she could only call the police after one hour had elapsed and he then left the flat. He threw away the pistol that he had used and left for Malaysia. He took along with him three watches, two of which were Rolex watches, and some

money.

55 In the second handwritten statement, he explained how he obtained the pistol from a friend from Thailand who sold it to him for RM15,000. The accused then smuggled the pistol into Singapore and kept it in the safe in his flat.

56 The accused also made six statements to ASP Abdul Halim Osman pursuant to s 121 of the Criminal Procedure Code between 6 March and 10 March 2006 (P197 to P202, with irrelevant matters blanked out by the prosecution and tendered in court on the third day of trial). These statements were recorded with the assistance of an interpreter from the Criminal Investigation Department, Mabel Ang, as the accused elected to speak in Mandarin. The accused did not allege that these statements had been made involuntarily. His only contention was that he had informed Mabel Ang that there was a "misfire" of the pistol in question but the interpreter told him that even if he said that, the investigating officer would not record it down. Mabel Ang replied that if the accused did tell her about a "misfire", she would have interpreted it and it would have been recorded. Since there was no mention in the statements about a "misfire", the accused could not have said it. After all, the statements were read back to him and he was invited to make any additions or alterations if he wished. ASP Abdul Halim Osman likewise denied that the accused had said in English that he misfired. The accused was cooperative throughout the recording of the statements.

57 In these six statements, the accused stated that he knew the deceased for more than ten years and only by the Chinese nickname "gu-ni-ter", which literally means "cow's milk pig". About three years before the shooting incident, both of them were engaged in illegal horse-betting and football-betting activities. The accused alleged that the deceased placed bets with him through runners and owed him some RM500,000 by April 2004. When the accused asked him to settle the losses, the deceased disclaimed responsibility for the bets. Some attempts at settlement talks followed.

58 In July 2005, when the accused met the deceased in Geylang, the deceased again disclaimed responsibility for the losses and told him that he would send someone to settle with him, which the accused understood as sending someone to kill him. The accused was angry at the deceased's arrogance as the deceased was not respecting the accused's position as former headman of the Ang Soon Tong gang (until he lost the sight of one eye some seven or eight years back). Some time later, the accused decided to purchase a small gun for self defence. He paid RM15,000 for it and was also handed about ten to twelve rounds of ammunition. He then smuggled the gun into Singapore and kept it in his safe at his Hougang flat.

59 On 14 February 2006, Moh Tang drove the accused in a Malaysian registered car from Johor to Singapore. At about 9pm that evening, they ate some food and drank some beer in James Tan's flat. They then proceeded to the coffee shop at Braddell Road where they had supper and continued drinking. The accused then related the incident in his Hougang flat concerning his offer of the tiger hide to Joseph Liew. When he left the flat later, he brought along a black pouch containing the pistol, the ammunition and a small knife.

60 At about 3am on 15 February 2006, the accused asked Ah Chwee to drive him to the Serangoon flat. The accused went up to the flat to speak to the deceased at the doorway, with the locked metal grille gate between them. He merely wanted to settle their differences but the deceased refused to talk to him. He then left the Serangoon flat and returned to James Tan's flat where they watched a football match and placed some bets on it. They also drank alcoholic beverages.

61 At about 6am, the accused asked Ah Chwee to drive him to the Serangoon flat again. The

accused alighted at the carpark there with the black pouch containing the weapons. He looked up at the said flat on the second floor and could see that the main door was opened. After a while, he decided to go up to the flat. He took out the small knife and asked S to go inside the flat. He then took out the pistol and held it in his left hand while his right hand held the knife. The black pouch was under his left armpit. When the deceased was roused from his sleep, the accused showed him the pistol and asked him what he would like to say. The deceased said it was up to the accused to say what it was that he wanted. The accused replied that he was there to rob him. The rest of the accused's account about the events in the flat that morning was by and large the same as that narrated by Joey, S and Risa except for the incident where he was alone with the deceased in the study room.

62 The accused claimed that when he returned to the study room from the master bedroom, the deceased used a chair to attack him. The accused blocked the chair with his right hand but the deceased continued to attack him three or four times. The statement continued (at the last three lines of [31] thereof):

At that juncture I fired a few shots consecutively at him. I recalled, I fired 4 to 5 shots at him. I opened fire to protect myself.

(The accused clarified in court that he only said to the recording officer in English, "I misfired".) He was not sure whether the deceased's hands were still tied at the front when the latter attacked him with the chair. He then went to the master bedroom where Joey and S were squatting at one end. He told Joey to report to the police one hour later. He then left the Serangoon flat.

63 The rest of the statements recounted how he told Ah Chwee to look for a river and how the accused walked to the canal alone to throw the pistol and spare rounds into the water. He added that he could have thrown the knife there as well. They then returned to James Tan's flat, where the accused changed his clothes, woke up Moh Tang and then left with him for Johor Baru via the Woodlands Checkpoint, with the filled white plastic bag in the boot of the Malaysian registered car. In Johor Baru, Moh Tang drove to his home and alighted. The accused then took over and drove the car to his second wife's flat, arriving there at about 11am. He left the loot in the boot and went up to the flat to sleep until about 3 or 4pm.

64 The statements further recounted how he later went to check the loot from the Serangoon flat and then abandoned the Malaysian registered car, how he travelled from town to town to evade arrest, even hiding in a graveyard for two or three days. He ended up in Kuala Lumpur where he asked a friend to register a room in a hotel for him. He then made plans with the seller of the pistol for him to exit to Thailand. After a few days, the accused moved to another hotel and asked his first wife to join him there, again asking his friend to register two rooms for him. When his first wife arrived at one of the two rooms with her two friends, he went to join them. The room was raided by the Malaysian police who placed him under arrest.

65 In his statements, the accused denied owing the deceased any money and claimed that he was not in financial straits, having bought a condominium unit (under mortgage) not too long ago for each of his two wives and having six shops selling health products. He also claimed to have a monthly income of RM10,000. He also claimed to have savings from his illegal betting activities. Asked why he chose Ah Chwee as his driver on 15 February 2006, he said it was because he trusted Ah Chwee, who could keep secrets. He also stated that he did not test the pistol after purchasing it. He said he did not know how to handle and use the pistol. The seller merely explained briefly to him how to use the pistol.

The accused's case

66 The accused testified in his own defence. His evidence-in-chief was brief. The events that day were already recorded in his statements and he saw no need to repeat them in court. He maintained that the pistol misfired when the deceased used the chair to attack him. He testified (at page 244 of the notes of evidence):

It was stated that he used the chair to attack me. I did not pull the hammer of the pistol at that time. So when I used my hand to block away the attack of the chair, the gun misfired. The thing was that, at that time I didn't pull the hammer but the gun misfired.

The chair mentioned above was the black swivel chair (photograph P62) which was found in the far corner of the study room when the police arrived. The accused could not recall whether the deceased's hands were still tied when the deceased lifted the said chair to attack him.

67 He had no intention of firing a shot as evidenced by the reports of the forensic experts that the sequence of the shots could not be determined and that the deceased's injuries could have been caused by the struggle or fighting.

68 The accused asserted that he had gone to the Serangoon flat to talk to the deceased and decided to rob him only after the deceased was rude to him. If he did not carry a weapon, the deceased would refuse to talk to him. When the chair was swung at him by the deceased, the accused tried to block it with his right hand and attempted to "poke" or punch the deceased with his left hand which was holding the pistol. A shot was fired unintentionally because he had pulled the trigger accidentally. He was shocked but the deceased continued to attack him. His mind then went blank and he panicked. He was not aware of what happened after that, how the other shots were fired or how many shots exactly there were. He did not fire any more shots after the deceased fell to the floor of the study room but did not know how many shots had been discharged already at that time.

69 He also said that he had drunk a lot of alcohol at that time and so was not in a very clear state of mind. He was drinking continuously with his friends between 9pm on 14 February 2006 and 6am on 15 February 2006 but could not recall the amount of alcohol (comprising beer, brandy and whisky) imbibed. He reckoned that his judgment that morning was affected by alcohol to the extent of 60%. He was not drunk at 3am on 15 February 2006 but was "half-drunk" at 6am. If he was not drunk, he would not have gone back to the Serangoon flat but would instead have returned to his home in Johor Baru to sleep. The records from the Woodlands Checkpoint (P263) showed that the accused left Singapore at 8.22am on 15 February 2006. The accused said that he could take over the driving of the car in Johor Baru although he was still "a bit steamed", which he explained as being still in a drunken state.

70 Subsequently, in response to questions from the court as to what exactly he meant by "misfire", the accused clarified that he meant that he had accidentally pulled the trigger of the pistol several times and not that the pistol went off by itself. He did not know then that the trigger could be pulled without cocking the hammer. The seller of the weapon had only told him that he could fire the pistol after having cocked the hammer. The accused also clarified that he did not shoot the deceased in self defence but accidentally. He had no intention of shooting him at all.

71 The accused had earlier insisted that the police photographer produce the photograph of the contents of the safe in his Hougang flat, which had been laid out on the floor. That was done (photograph P161A). The accused explained that the gold jewellery and rings shown in the

photograph would refute any suggestion that he was in need of money as they could be pawned for a few thousand dollars.

72 The accused wanted to call a medical expert from Johor Baru, located by his first wife, to testify on the effects of alcohol on a person's judgment. His first wife had difficulty contacting that doctor and the accused decided to get an expert from Singapore instead but did not know of any particular expert. I directed the prosecution to assist the accused by locating some government experts here who would be familiar with the effects of alcohol on a person's mental faculties. In the meantime, I emphasized to the accused, his family members could continue to look for an expert on their own. I also emphasized to the accused that he was at liberty to call whichever expert he wanted so long as that expert was willing and able to come to court to testify and that he did not need to choose the government experts identified subsequently by the prosecution.

73 When the trial resumed on 31 January 2007 after a day's break, the accused's wife informed the court that she had located an expert, Dr Lim Yun Chin ("Dr Lim") of Raffles Hospital. The prosecution stated that Dr Arthur Lee of the Institute of Mental Health ("IMH") was also competent to testify on the issue in question. The accused elected to have Dr Lim as his expert. As his expert required time to interview Ah Chwee and James Tan and then the accused himself, the proceedings were adjourned for a report to be furnished by Dr Lim.

74 After Dr Lim had prepared his report, a copy of which was given to the accused, the accused informed the court through the Prison authorities that he no longer wished to call Dr Lim as his expert witness and requested to have another expert take his place. I then directed the prosecution to resume its assistance. The prosecution suggested the abovementioned Dr Arthur Lee as well as Dr Munidasa Winslow ("Dr Winslow"), also of IMH, both of whom are experts in the field of alcohol consumption. The accused subsequently indicated his choice of Dr Winslow through the Prison authorities. Arrangements were then made for Dr Winslow to interview the relevant witnesses and the accused.

75 Dr Winslow, the Chief and Senior Consultant Psychiatrist, Addiction Medicine Department of the IMH, subsequently prepared a two-page report dated 6 March 2007, a copy of which was given to the accused. The trial then resumed on 2 April 2007. In his report (D1), which was for the purpose of assessing the relevance of alcohol to the charge that the accused was facing, Dr Winslow said he had examined the accused on two occasions and had interviewed the accused's elder brother, the accused's two Malaysian wives, James Tan and Ah Chwee. He also had access to Dr Tommy Tan's notes of interviews and his report of 4 May 2006, together with the CT scan and EEG results and the neuropsychological tests. Dr Winslow opined in his report as follows:

3 From all accounts, the accused started drinking at an early age when he was 14 or 15 years old. He continued drinking fairly heavily except for the time of his remands. He was also noted to drink to the point of intoxication on many occasions. He reported experiencing memory blackouts in the past. His wife and friends would avoid him when intoxicated, as he could be more aggressive. He reports drinking heavily on the night before the shooting.

4 On the basis of my interviews, it is possible that he had drunk excessively the night before the shooting. In his own account, he was intoxicated or "high" at the material time. Despite this, an analysis of his behaviour before and after the shooting would indicate that he was not of unsound mind. I would also find that despite reportedly imbibing an indeterminate amount of alcohol, his ability to form an intent was not impaired.

5 In summary, I would agree with Dr Tommy Tan's assessment that he was not of unsound

mind at the material time. I would also find that despite the possibility of intoxication, his ability to form intent was not impaired, and there was no evidence of any alcohol related psychotic process.

76 In the light of this report, the prosecution, which had earlier reserved its right to call rebuttal evidence, decided that it was not necessary to do so.

77 In oral testimony in court, Dr Winslow elaborated on his findings and explained that he had come to those conclusions after considering the following:

- (a) the accused knew what he was doing when he went to and entered the Serangoon flat.
- (b) the accused was able to remember fragments of the conversation between him and the deceased in the said flat.
- (c) the accused's conduct was purposeful before and after the events in the said flat.
- (d) there was no evidence of an unsteady gait or other very significant features of intoxication immediately after the shooting incident.

The defence expert was unable to gauge the amount of alcohol consumed as the drinks were shared among the accused and his friends and no one could be certain how much alcohol was actually consumed during the material time about one year ago. They also had food with the drinks and that would affect the absorption rate of alcohol. Good drinkers like the accused would also have a higher level of tolerance for alcohol and be able to detoxify it much faster.

78 The accused's questioning of his chosen expert witness centred on the issue of a conversation between them during which Dr Winslow told him that if he were charged for murder, he could help him to have the charge reduced to one of manslaughter. Dr Winslow explained that he told the accused that there was a possibility that if it was a murder charge and he were highly intoxicated, he could be eligible for the defence of diminished responsibility. The interview was conducted with the assistance of an interpreter from the Criminal Investigation Department.

79 The accused had no other witness besides Dr Winslow. At the close of the evidence, the prosecution was then directed to prepare its written submissions over the next three days and to serve a copy on the accused by Thursday, 5 April 2007, so that he could have the public holiday (Good Friday on 6 April) and the weekend to study it and prepare his response by Monday, 9 April 2007. The accused had already received the notes of evidence for the previous days in court. At the request of the accused, I directed the Prison authorities to provide him with writing materials so that he could make notes for his closing submissions. The prosecution complied with the deadline. As things turned out, the court's hearing schedule did not permit the trial to continue on Monday, 9 April 2007. The next hearing date was to be Thursday, 3 May 2007, thus giving the accused some four weeks to study the prosecution's closing submissions.

80 However, on 14 April 2007, the accused requested to recall Dr Winslow to clarify certain issues. I granted him the indulgence and so Dr Winslow returned to court on Friday, 27 April 2007. The further questioning was a rehash of much of the earlier testimony. The accused also questioned his expert witness on the amount of alcohol in standard drinks. Dr Winslow reiterated his earlier evidence that he could not simply make an assessment based on blood alcohol level, which was uncertain at any rate in this case, but had to consider the other factors mentioned by him at the earlier hearing.

The decision of the court

81 Section 4 of the Arms Offences Act provides:

(1) Subject to any exception referred to in Chapter IV of the Penal Code (Cap 224) which may be applicable (other than section 95), any person who uses or attempts to use any arm shall be guilty of an offence and shall on conviction be punished with death.

(2) In any proceedings for an offence under this section, any person who uses or attempts to use any arm shall, until the contrary is proved, be presumed to have used or attempted to use the arm with the intention to cause physical injury to any person or property.

82 Section 2 of the same Act has the following definitions:

“arm” means any firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious liquid, flame or fumes can be emitted, and any component part thereof and includes any bomb or grenade and any component part thereof;

...

“use”, with its grammatical variations, means –

(a) in relation to a firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted – to cause such shot, bullet or other missile to be discharged or such noxious liquid, flame or fumes to be emitted with intent to cause physical injury to any person;

(b) ...

83 There can be no dispute that the Beretta 0.22 Calibre pistol in issue fell within the meaning of “arm” in that it is a “firearm” or “any other kind of gun or pistol” from which bullets can be discharged. Once a shot has been discharged from an arm by a person, it is incumbent on him to prove on a balance of probabilities that he did not intend to cause physical injury to anyone (see the Court of Appeal’s decisions in *Tay Chin Wah v PP* [2001] 3 SLR 27 at [10] and in *Ismail bin Abdul Rahman* [2004] 2 SLR 74). In the latter decision, in which I was also the trial judge, the Court of Appeal (at [48]) felt that I had adopted an incorrect method of analysis of the operation of the statutory presumption in s 4(2) of the Act when I said (at [47]) that “the facts of this case did not even require the application of the presumption ...”. The Court of Appeal (at [49]) felt that those words presupposed that I could choose whether or not to apply the said presumption when Parliament clearly mandated it to be an “automatic” one which came into operation the moment a person used or attempted to use any arm. With respect, all I meant in the context of that statement was that the prosecution’s evidence in that case was sufficient to prove the intention to cause physical injury (and even death) even if there was no such statutory presumption in existence. It is not difficult to appreciate the meaning of the mandatory words “shall ... be presumed” in s 4(2).

84 In the present case, the accused has not denied that he discharged several rounds from the Beretta. He is therefore automatically presumed by law to have used the Beretta with the intention to cause physical injury to the deceased and must now prove otherwise on a balance of probabilities. At the end of his closing submissions, he confirmed that he was relying on the general exceptions of

intoxication, accident and the right of private defence provided in Chapter IV of the Penal Code (although he had indicated earlier during the trial that he was not asserting the right of private defence – see [70] above).

85 Sections 85 and 86 of the Penal Code deal with the defence of intoxication in the following manner:

85 (1) Except as provided in this section and in section 86, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and –

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.

86(1) Where the defence under section 85 is established, then in a case falling under section 85(2)(a) the accused person shall be acquitted, and in a case falling under section 85(2) (b), section 84 of this Code and sections 314 and 315 of the Criminal Procedure Code shall apply.

(2) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(3) For the purposes of this section and section 85 “intoxication” shall be deemed to include a state produced by narcotics or drugs.

86 As the accused’s intoxication, whatever the level might have been, was clearly self-induced, s 85(2)(a) of the Penal Code is not available to him. I have absolutely no reason to disagree with or to doubt the findings of Dr Tommy Tan and Dr Winslow that the accused, however “high” he claimed to have been at the material time, had not gone over the precipice of sanity. There was therefore no unsoundness of mind at the time of the shooting incident and s 85(2)(b) is also not available to the accused. As Dr Winslow, the defence expert, agrees with the findings of Dr Tommy Tan and has said, “I would also find that despite reportedly imbibing an indeterminate amount of alcohol, his ability to form an intent was not impaired”, it is clear that the accused cannot claim to have been unable to form the intention to cause physical injury to the deceased.

87 Weighing the accused’s claim of intoxication against the other objective evidence (as the Court of Appeal did in *Jin Yugang v PP* [2003] SGCA 22 at [32]), Dr Winslow’s findings are fully justified on the facts of this case. Despite the accused’s claim that he was “half-drunk” at around 6am on 15 February 2006 and that the constant inflow of alcohol for the past nine hours had impaired his judgment by about 60%, his actions at that time and beyond belied his assertions.

88 He was still the clear-headed, veritable headman giving Ah Chwee orders before and after the shooting incident at the Serangoon flat. He waited at the ground level for the opportune moment to enter the Serangoon flat when the main door and the metal grille gate were opened for S to go to school. He had stated in evidence that the metal grille gate was locked when he was talking to the

deceased at the doorway at around 3am that day. When he entered the flat, he knew who would be inside and could engage in rational conversation and issue coherent orders to the occupants, such as telling them to tie each other up. He was obviously very steady, holding a weapon in each of his hands and his black clutch bag at his left armpit without even dropping it once. He knew what he wanted – after plundering the master bedroom, he moved systematically to loot the study room by ordering the deceased to empty the contents of his safe. He had the presence of mind to disperse the occupants into separate bedrooms. After the shooting incident, he further demonstrated his coolness and clarity of thought by ordering Joey not to call the police for the next one hour, evidently so that he would have time to make his exit from the island. He did slam the metal grille gate on his way out, apparently not caring that the noise might alert the deceased's neighbours. That, in my view, was probably done in angry bravado rather than in drunken stupor.

89 Understandably, the accused was a bit more excited than his normal self when he returned to meet Ah Chwee in the Nissan Cefiro. After all, he had just pumped several bullets into the person who had been irritating him for some time and was holding on to that person's valuables and money. He had apparently dropped some Thai currency notes while making his getaway as a sum of 10,830 Baht was found by a passer-by near the deceased's block. However, that was probably due to the fact that the cash had been stuffed into the white plastic bag in a frenzy earlier and had dropped out as the accused was walking hurriedly away (some of the loot was not kept inside the blue denim bag but was merely placed in the white plastic bag). It was not indicative of a man strewing cash in the street in drunken jubilation.

90 The accused's actions after the shooting incident had the hallmarks of an assured and accomplished assassin. He instructed Ah Chwee to drive to a canal so that the Beretta and spare ammunition could be discarded. He then directed Ah Chwee to drive back to James Tan's flat where he woke up Moh Tang, had a change of clothing, transferred the loot from the Nissan Cefiro into the Malaysian registered car and, before being driven off, tooted triumphantly to Ah Chwee to read the evening newspapers. In his statements to the police and in his accounts to the medical experts, he could recall practically all these events.

91 Can a man capable of all the above actions be so intoxicated at that time that he was unable to form an intention to cause physical injury to another (see s 86(2) of the Penal Code)? I think only a highly intoxicated person who has drowned his rationality would answer in the affirmative.

92 Section 80 of the Penal Code spells out the defence of accident thus:

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

93 The accused had no lawful excuse for carrying a fully loaded Beretta and barging into someone's home in the early morning. Everything that he was doing in the Serangoon flat that morning was unlawful irrespective of whether he was asking for financial assistance or was collecting a debt or merely wanted to force the deceased to negotiate. He was already in the process of robbing the deceased and his family when the deceased allegedly retaliated by attacking him when he returned to the study room. Even if so, the deceased was doing no more than exercising his right of private defence of his body, of the body of his wife, daughter and domestic help, and of his property against an armed robber who had trespassed into his home and who appeared ready and able to inflict death or grievous hurt (see generally, ss 96 to 105 of the Penal Code). Indeed, the deceased would have been justified in law if he had caused death or other harm to the accused in exercising such right (see s 100(a) and (b) and s 103(a) and (d) of the Penal Code). That would still be the case

even if the accused had decided by then that all he wanted to do was to have a settlement talk with the deceased. It could not be disputed that the accused was still strutting about the flat in a most menacing manner, with knife and pistol in his hands and that a robbery was taking place.

94 In any event, the claim that he accidentally “misfired” six rounds that morning in the course of a fight is nothing more than laughable fantasy. As the evidence shows, it would require a force of some 12lbs to pull the trigger of a pistol whose hammer is not cocked. Pulling the trigger of a pistol in this manner is far removed from touch-typing on a computer keyboard or even on the stiff keys of an old typewriter. It requires strength and a firm grip. Pulling the trigger once or twice is hard enough. Pulling it six times consecutively definitely demands determined deliberateness. There is no automatic discharge function in the Beretta such that several bullets could be fired with a single pull of the trigger. Even if the first shot was fired with the hammer cocked (thereby requiring a pull force of only 4lbs), the subsequent five shots must have been fired when the hammer was not cocked (thereby requiring a pull force of 12lbs). If the subsequent shots were fired when the hammer was cocked each time, it begs the question why the act of cocking the hammer was done five times continuously and accidentally during a fight. It was even more remarkable that five out of six accidental shots could hit the deceased in various parts of his body from both front and back and from various angles.

95 The accused’s defence of accidental shooting or “misfire” could therefore never succeed in fact or in law.

96 I have already alluded to the deceased’s right of private defence. The question now is whether the accused had a similar right in the shooting incident. Section 96 of the Penal Code provides:

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

The Court of Appeal in *Soosay v PP* [1993] 3 SLR 272 at 281 held that in order to set up this defence, a person who has caused death must prove on a balance of probabilities that:

- (a) the right of private defence has arisen,
- (b) the right was exercised in good faith,
- (c) the death was caused without premeditation and
- (d) the death was caused without any intention of doing more harm than was necessary for the purpose of such defence.

97 On the evidence, I accept Risa’s account relating to the first shot that was fired in the study room. Plainly, the accused was the agitated aggressor who had even threatened the life of someone who was merely earning an honest living in the deceased’s household and with whom he could have had no conflict before. I am convinced that Risa was fulfilling her promise to help her former employer not by telling malicious falsehood against the accused but by voicing verity. The statement about hiding behind the door of S’s room was nothing more than an inaccurate rendition of her evidence that she was squatting and hiding behind the door frame to peek into the study room. Risa’s version of the events is supported by the objective forensic evidence that this particular shot was fired at a very short MTT distance.

98 The television cable was found around the left wrist of the deceased’s fallen body. Photograph P7 shows his right hand was not tied up. Let us assume that the deceased had somehow managed to loosen the said cable and free his wrists so that he could lift the black swivel chair to

attack the accused, resulting in the allegedly accidental gunshot damage to the left armrest of the chair. If this were so, surely the shirt and the belt that were draped over the backrest would have slipped off, if not thrown off altogether by the violent struggle. However, the photographs (P8 and P62) show them to be still on the backrest arranged in an orderly manner. ASP Abdul Halim Osman has said that the study room was in that condition when he arrived at the Serangoon flat and I doubt very much that any of the deceased's household would be so concerned about neatness that eventful morning that they had picked up those two items from the floor and arranged them neatly on the backrest before the police arrived. On the facts therefore, the assertion of private defence fails. The deceased could not have used the black swivel chair to attack the accused.

99 On the law, it is inconceivable for an assailant to have a right of private defence against someone legitimately exercising his right of private defence against the assailant. Thus, in *Mohd Sulaiman v PP* [1994] 2 SLR 465, the Court of Appeal held that such a defence was not open to the appellant there as he had illegally broken into a coffee shop and was committing theft when the deceased, the security guard of the said coffee shop, confronted him and threw hot water at him because the deceased was doing no more than exercising his right of private defence over property. In my view, this must be correct in law and logic. If it were otherwise, the right of private defence would swing back and forth infinitely between victim and assailant like a perplexed pendulum. The accused was in the process of committing armed robbery and had pointed his Beretta at Risa's head and then the deceased's head. Even if the deceased did attack the accused with the chair, any assault by the deceased would have been a legitimate exercise of his right of private defence against which the accused could not have a corresponding right.

100 It was probably fortuitous that one shot out of the six fired missed the deceased. I am persuaded that the deceased's right temple was shot when he was already floored. Indeed, the prosecution's evidence reinforces the presumption that the accused intended to cause physical injury when he fired the shots. His intention was not merely to injure – he shot to kill and he succeeded.

101 On the totality of the evidence, the accused has failed completely to disprove the presumption in s 4(2) of the Act. I therefore find the accused guilty as charged and convict him under s 4(1) read with s 4(2) of the Arms Offences Act. The only punishment provided by law is the death penalty. It is now my solemn duty to pass this sentence on the accused.

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