

Public Prosecutor v Chee Cheong Hin Constance
[2006] SGHC 9

Case Number : CC 13/2005
Decision Date : 24 January 2006
Tribunal/Court : High Court
Coram : V K Rajah J
Counsel Name(s) : Wong Kok Weng, Han Ming Kwang and Chong Li Min (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan, Anand Nalachandran and Sunil Sudheesan (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — Chee Cheong Hin Constance

Criminal Law – Offences – Culpable homicide – Accused charged with causing death of child under s 304(a) Penal Code – Prosecution's case against accused based on circumstantial evidence – Whether circumstantial evidence "inevitably and inexorably" leading court to single conclusion of accused's guilt – Section 304(a) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Kidnapping, abduction, slavery and forced labour – Accused charged with kidnapping of child under s 363 Penal Code – Whether accused must have motive for taking child before offence made out – Whether act of taking child must be preceded or accompanied by force before offence made out – Section 363 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Trials – Adverse inferences – Whether court may draw adverse inference from accused's lies on material issues at trial – Effect of drawing adverse inference from accused's lies – Sections 123(1), 196(2) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

24 January 2006

V K Rajah J:

1 On 7 October 2004, at about 4.44am, a four-year-old girl plummeted from Block 1, Telok Blangah Crescent ("the Block"). She died five days later without regaining consciousness. Just before she fell, her parents, who had been frantically searching for her, heard her piercing cries. The accused, who was alone with the child just before she plummeted, has been charged with kidnapping her and causing her death. The accused emphatically denies the charges and in her police statement, she queries quizzically, "*Who in the right sense of mind would want to throw somebody down, what more a child?*" Who indeed? That very question constitutes the crux of these proceedings.

The charges

2 The accused, Chee Cheong Hin Constance, faces charges of:

(a) kidnapping the deceased, Neo Sindee, from the lawful guardianship of her father, Neo Eng Tong (an offence punishable under s 363 Penal Code (Cap 224, 1985 Rev Ed)) ("the kidnapping charge"); and

(b) causing the death of Neo Sindee by causing her to fall from the Block with the intention of causing such bodily injury as is likely to cause death (an offence punishable under s 304(a) Penal Code) ("the culpable homicide charge").

Undisputed facts

3 Neo Sindee ("Sindee") was the daughter of Neo Eng Tong ("Neo") and Kittiduangrat Ketkanok ("Kittiduangrat"). During the material period they resided at #02-602 of the Block ("the Flat") (, together with Joseph Wong Tai Fatt ("Joseph"). Joseph was a close friend of Neo.

4 Neo, a rag and bone dealer, had befriended the accused sometime in 2003, about a year before the incident. By late September 2004, however, their once intimate relationship was in rack and ruin. The precise dates as to when their romantic liaison commenced and dissolved are disputed. What is undisputed is that in the course of their relationship, Neo borrowed a substantial amount of money from the accused which he has failed to repay.

5 On 7 October 2004 at about 4.00am, the accused entered the Flat and removed Sindee from her bed without her parents' consent. The precise circumstances surrounding Sindee's removal are shrouded in controversy and vigorously contested. Carrying Sindee, the accused then mounted the nearest staircase in the Block. Shortly thereafter, Sindee fell from the Block. Her body crashed onto the roof shelter adjacent to the lift shaft and landed on the ground floor through a panel. The accused was the last person alone with Sindee.

6 Sindee was admitted to the Singapore General Hospital on 7 October 2004 at about 5.00am. On 12 October 2004, at about 2.19pm, Sindee passed away. The only person now in a position to precisely explain or recount what happened just prior to Sindee's fall is the accused.

The Prosecution's case

7 The Prosecution's principal witnesses were Neo, Kittiduangrat, Joseph, as well as two expert witnesses, Dr Michael Tay Ming Kiong ("Dr Tay"), Head of the Criminalistics Laboratory of the Health Sciences Authority and Dr Ho Lai Yun ("Dr Ho"), a Senior Consultant Paediatrician. Dr Ho has a distinguished career in paediatrics spanning 30 years. Since 2001, he has been the Director of the Child Development Programme at the Ministry of Health.

Evidence of Neo, Kittiduangrat and Joseph

The relationship between Neo and the accused

8 Neo testifies that he visited the accused's residence in the course of plying his trade. Neo pursued the accused and their friendship rapidly evolved into an intimate relationship.

9 Neo then borrowed large amounts of money from the accused, amounting in all to about \$40,000. While Neo claims he repaid some of the money, he acknowledges that the bulk of the loan remains outstanding. After some time, their once intimate relationship started to fray and fragment before breaking down completely. Neo claims that the accused's possessiveness was one reason that led to the eventual break-up. He concedes, however, that he had gambled away most of the money that the accused had lent him. He claims that though they broke off their relationship sometime in July 2004, they nevertheless continued to meet from time to time as he feared the accused might stir up trouble if he avoided her completely. According to Neo, the accused ultimately became a nuisance who continually pestered him and harassed him for the repayment of the loan. He claims that Sindee "was frightened" by the accused as she created unpleasant scenes including "banging on the doors" of the Flat when his wife was not around.

10 Joseph, who resided at the Flat from 1 September 2004 upon his release from prison, testifies that he came to know of Neo's relationship with the accused sometime in September 2004. He had advised Neo to think about the adverse consequences that the relationship would bring to Neo's

family. He confirms that there were instances when the accused came to the Flat to demand the return of her money; she would turn up at the Flat when Kittiduangrat was absent and make things difficult. Two visits on 28 September 2004 and 3 October 2004 are particularly etched in his memory. He had unsuccessfully tried to prevent her from entering the Flat. The loud altercation that ensued between Neo and the accused on each occasion was bitter and unpleasant. He also acknowledges that Neo had unsuccessfully requested that the accused invest money in a brothel which he and Neo had proposed to set up.

11 Both Neo and Joseph are adamant that Kittiduangrat was completely in the dark about Neo's relationship with the accused until 3 October 2004. This point is also unequivocally reiterated by Kittiduangrat.

Incident on 3 October 2004

12 At about 9.00pm on 3 October 2004, the accused called Neo on his handphone. Neo was in the Flat. He did not respond to the call. Peering through a window, Neo observed the accused standing in the common corridor attempting to look into the Flat.

13 Neo, intending to avoid the accused, hid with Sindee behind the door to their bedroom. Joseph informed the accused that Neo was not in but she ignored him and forced her way into the Flat. The accused then frantically searched for Neo, demanding that he show himself. Joseph attempted to obstruct her path and they began quarrelling in the living room. Neo then emerged and told the accused to stop creating a scene. The accused again pressed him for the return of the money.

14 Kittiduangrat, who worked as a hawker assistant, then returned home. She witnessed the ongoing altercation between Neo and the accused. On seeing her, the accused immediately fled. Kittiduangrat then confronted Neo about the precise nature of his relationship with the accused. She had noticed the accused loitering on a number of occasions over the previous three weeks, both at the foot of the Block as well as at Whampoa Hawker Centre where she worked.

15 Neo confessed to Kittiduangrat that he had had an intimate relationship with the accused but insisted that the relationship was over. Shortly thereafter, Neo's handphone rang. Kittiduangrat picked up the call and upon hearing a female voice, told the caller that she wanted to settle the matter directly with her and that she would meet her. After a bath, Kittiduangrat proceeded to the void deck to meet the caller who turned out to be none other than the accused. The accused, however, avoided confronting Kittiduangrat and ran upstairs. From the foot of the Block, Kittiduangrat noticed that the accused had moved up to the seventh or eighth floor of the Block. The accused beckoned for her to come up. Kittiduangrat walked up to meet the accused but the accused once again avoided her. Kittiduangrat then returned to the foot of the Block whereupon the accused again appeared and waved to her. Kittiduangrat, worn out by the accused's antics, eventually returned to the Flat without ever meeting her.

Incident on 7 October 2004

16 Joseph attests that on the night of 6 October 2004, he left the main door, the metal gate and the windows of the Flat unlocked when he retired for the night to the front bedroom adjacent to the common corridor. Neo, Kittiduangrat and Sindee had earlier retired for the night to the rear bedroom adjacent to the kitchen.

17 Kittiduangrat testifies that at about 4.30am, she was suddenly awakened by a sound. She

realised immediately that Sindee was missing. The lights had not been switched on but the bedroom door was ajar. She immediately woke Neo up and informed him that Sindee was missing.

18 Neo confirms that his wife was the first to discover Sindee's absence. He thought that he saw a dark shadow moving out of the bedroom. He rushed out but did not find anything. On seeing the main door open, he ran downstairs to the bus stop but was unable to locate Sindee.

19 Kittiduangrat and Joseph in the meantime frantically searched the void deck of the Block but to no avail. Neo later returned to the void deck of the Block to join Kittiduangrat and Joseph.

20 Neo, Kittiduangrat and Joseph all testify that they subsequently heard Sindee crying out loudly from an upper floor of the Block. Just as they were about to try to locate Sindee, they saw Sindee crashing through the shelter cover near Lift A and then falling on to the ground. Sindee was bleeding profusely. Kittiduangrat recalls that an interval of 15 to 20 minutes must have lapsed from the time she was alerted to Sindee's absence until Sindee's fall.

21 Neo rushed to Sindee and carried her back to the Flat. When he could not locate his handphone, they decided to take Sindee to hospital by taxi. They ran back downstairs carrying Sindee.

22 When they reached the void deck, they noticed the accused near Lift B. While walking hurriedly away from the Block, she glanced back at them. Neo directed Kittiduangrat to pursue and detain the accused. When the accused noticed Kittiduangrat and Joseph running towards her, she immediately took to her heels as well.

23 Kittiduangrat and Joseph nevertheless managed to detain the accused along Henderson Road. They hailed a taxi and promptly delivered her into police custody at the Police Cantonment Complex.

24 In the meantime, Neo managed to enlist the assistance of a passing van and conveyed Sindee to the Singapore General Hospital.

The accused's statements

25 The accused gave three handwritten statements on 7 October 2004. She also made a cautioned statement on the same day. The admissibility of these statements is not challenged.

26 In these statements, the accused claims that she had visited the Flat to collect money from Neo. She had removed Sindee from the bed only because Neo pointed a cleaver at her. She had intended to use Sindee merely as a shield to protect herself from Neo. She then rushed out of the Flat carrying Sindee. While she fled she heard footsteps behind her. In an attempt to avoid her pursuers, she mounted the stairs. She cannot precisely recollect at which floor she stopped running. When Sindee began crying she turned her to face the "outside of the corridor" so as not to wake up the neighbours. Subsequently she allowed Sindee to fall onto the corridor floor and then made her getaway. In her cautioned statement, she claims that Sindee had held on to the corridor railing and that she had tried to shake "her off the railing". In her earlier statements however she claims that she "thought" Sindee had grabbed hold of the railing and that she tried to shake her loose. When she heard footsteps approaching she panicked and, in her own words, "ran away releasing my hands and thinking, I dropped the girl on the floor of the corridor".

Expert evidence

Psychiatric evidence

27 Consultant Forensic Psychiatrist, Dr Stephen Phang ("Dr Phang"), conducted a psychiatric assessment of the accused while she was remanded at Changi Women's Prison between 29 October to 17 December 2004. Dr Phang testified that the accused was "not of unsound mind" at the time of the offence and that the accused is fit to plead. He diagnoses the accused as suffering from simple schizophrenia. In his carefully prepared and well-crafted medical report he concluded:

... I am of the opinion that the accused suffers from simple schizophrenia, which is a subtype of schizophrenia characterized principally by an insidious but progressive deterioration of personality and function. *Not infrequently, the disturbed emotions, subtly changing perceptions and altered personal relationships in early schizophrenia are often associated with disturbed and apparently inexplicable behaviour.* The onset of her illness is likely to have commenced several years ago. She was and remains, however, cognizant of the nature and potential implications of the current charge against her. In this sense, she is currently **fit to plead** to the charge against her, and was **not of unsound mind** at the material time of the commission of the alleged offence. While she denied intending to cause the death at the material time of the incident, I would further opine that she was suffering from an abnormality of mind, namely simple schizophrenia, which would have subsequently impaired her mental responsibility for her act in causing death. She would therefore, in my opinion, be eligible for the defence of diminished responsibility under Exception 7 to Section 300 of the Penal Code. [emphasis added, emphasis in bold in original]

28 In the course of his unchallenged testimony, Dr Phang emphasised that another classic hallmark of this insidious but progressive illness is that patients have "no concept of the progressive deterioration in their own personality and function. They have no insight into it". The illness would have "attenuated her better judgment, would have attenuated her insight". Dr Phang also detected the beginnings of paranoid delusions in the accused. He agreed that persons suffering from simple schizophrenia "do on occasion react very violently in an out of proportion degree of violence ... to trivial stimuli around them".

Forensic pathological evidence

29 Senior Consultant Forensic Pathologist, Dr Paul Chui ("Dr Chui"), conducted an autopsy on Sindee. Dr Chui has testified that the cause of Sindee's death was "multiple injuries" comprising of:

- (a) severe oro-maxillary facial fractures;
- (b) fracture of the upper left thigh bone; and
- (c) fracture of the left shinbone.

30 Dr Chui also affirms that these injuries were likely to cause death, and were consistent with injuries normally sustained in a fall from height, but could not precisely confirm the height. Given the nature of the injuries and based on records of past impact survival, Dr Chui was prepared to state that it was more probable that Sindee fell from below the tenth floor of the Block. He also confirmed on the basis of autopsy and paediatric records of children that the mean inside grip diameter of a child with Sindee's attributes was 3.1cm (range spanning from 2.7cm to 3.5cm), whilst the mean hand length was 11.4cm (range spanning from 10.3cm to 11.6cm).

31 Forensic Odontologist, Dr Tan Peng Hui ("Dr Tan"), performed a dental examination on Sindee. Dr Tan affirms that the facial fractures and dental injuries on Sindee's body were "consistent with

frontal impact trauma from a fall from height”.

Paediatric evidence

32 Dr Ho visited the scene and familiarised himself with the relevant measurements of the railing in the Block including its height. He also carefully appraised Dr Chui’s autopsy report on Sindee’s injuries and took into account the measurements of Sindee’s palm grip.

33 Dr Ho opines that it was very unlikely that a child having a build similar to Sindee in terms of height and weight would have been able to lift herself over the railing. Further, Sindee would not have been able to maintain a firm grip on the railing as her palm size would by no means adequately encompass the circumference of the upper bar of the railing. In his opinion, Sindee could and would not have climbed over the railing of her own volition.

Scientific reconstruction of events

34 Dr Tay conducted several experiments aimed at simulating Sindee’s fall. Three 25kg bags of pork packed in three jointed sections representing the head/neck, torso/arms and lower limbs were employed to simulate the weight and body of Sindee. Three distinct methods of throwing (or, perhaps more aptly, “pushing”) were deployed: (a) tipping the bag over, (b) throwing with a slight effort and (c) throwing with a strong (determined) effort. The tests were carried out thrice on the fourth, sixth and tenth floors by a police officer, Winnie Foo (1.70m, 55kg), whose build is similar to that of the accused (1.69m, 53kg). She rested the dummy on the railing and then applied the three requisite and varying levels of force to push it over. After each fall the dummy was repacked to ensure no weight loss.

35 Dr Tay testifies that the trajectory of Sindee’s fall could be resolved into two components – the vertical component that resulted from the force of gravity and the horizontal component that resulted from the horizontal force to which she must have been subjected, just prior to plummeting from the Block. This force could have come from an external party or conceivably even from Sindee herself. He emphasises that each component of force was independent of the other. The horizontal component would determine the horizontal distance measured from the edge of the Block to the point at which Sindee ultimately landed.

36 Sindee’s body had landed in an area measuring a horizontal distance of between 3.09m to 3.77m from the edge of the Block. The results of Dr Tay’s experiments indicate that the average horizontal distances obtained for the various simulations were:

	Tipping Over	Light Throw	Strong Throw
Fourth storey	1.17m	1.97m	2.72m
Sixth storey	1.13m	2.05m	3.30m
Tenth storey	1.64m	2.26m	3.96m

37 Dr Tay concludes that the experiment results demonstrated that Sindee was not merely tipped over the railing but that she had been projected over with a force greater than that commensurate with merely tipping her body over the railing. If Sindee had fallen from the sixth floor, the results show that she was projected with a strong force. If she fell from the tenth floor, the results show that she was projected with a force commensurate with an effort ranging from light to strong.

The defence

The accused's version of events

38 The accused was a leading stewardess with an international airline for several years. Her services were terminated about three years prior to the incident. She was unemployed at the material time.

39 The accused claims that towards the end of 2003 she commenced an intimate relationship with Neo. She was unaware that Neo was married until sometime in February 2004. Neo had then informed her that his marriage had broken down irretrievably. He also told her that he required money for his business needs. Almost unquestioningly, she lent him about \$50,000 over a period of time.

40 Neo later acknowledged that he had gambled away the money. By then the accused was facing financial issues of her own and demanded the return of her money. Neo promised to return the money to her, and though he agreed to repay her in instalments of \$500 per month, he eventually only paid two such instalments. She has been unable to recover the balance.

41 The accused adamantly maintains that Kittiduangrat was aware all along that Neo was in an intimate relationship with her. She asserts that Kittiduangrat had on occasion even seen them together and had not reacted adversely to her.

42 On 28 September 2004, she visited the Flat to meet Neo. Neo did not respond to her calls. She heard him when she was in the common corridor. Suspecting that he was evading her, she then entered the Flat. As soon as she entered, Joseph started shouting at her and attempted to push her out. Neo later emerged and kicked her in the abdomen, as did Joseph. At Neo and Joseph's insistence, the three later left the Flat and hailed a taxi. The accused claimed that Neo and Joseph had asked the taxi driver to proceed to Telok Blangah Hills. Apprehensive about her safety, she requested the taxi driver to proceed elsewhere. The taxi driver then drove to Tiong Bahru Plaza where Joseph and Neo abruptly took their leave.

43 On 3 October 2004, the accused visited the Flat once again to request for the repayment of her money. Neo told her to return in two days' time. While she was at the Flat, Kittiduangrat returned. The accused claims she saw Kittiduangrat carrying a knife. She was very concerned, recalling that Neo had earlier told her that Kittiduangrat had previously armed herself with a knife and had on one occasion even held a knife to his neck. She ran upstairs in order to avoid a confrontation with Kittiduangrat. She did not speak to Kittiduangrat.

44 On 5 October 2004, the accused again returned to the Flat (Neo however denies that they met). Neo allegedly told her to return in two days.

45 In the early hours of 7 October 2004, the accused made her way back to the Flat to speak to Neo. She heard sounds from the television in the front bedroom and assumed that Neo was watching television. She knocked on a windowpane. Joseph then opened the main door for her. After

glancing at the front bedroom and realising that Neo was not there, she immediately proceeded to the rear bedroom. As she entered the rear bedroom, Neo suddenly sat up in bed and raised a cleaver. Instinctively, she grabbed Sindee from the bed as a shield and dashed out of the Flat. She claims Neo "started chasing after me". She ran up the closest staircase to avoid being pursued by Neo and the others.

46 After carrying Sindee upstairs, she attempted to place Sindee onto the corridor floor but Sindee clung onto the railing. The accused claims she tried to shake Sindee loose and cannot fathom how Sindee fell over the railing. Indeed when she "left" Sindee she believed that Sindee had tumbled onto the corridor floor. Employing a dummy in a mock-up setting of the corridor, the accused demonstrated in court how Sindee held onto the horizontal bar of the railing. She had held Sindee around her waist while Sindee held on to the horizontal bar.

Defence expert

47 Dr Prakash Thamburaja ("Dr Prakash"), an Assistant Professor in the Department of Mechanical Engineering at the National University of Singapore, has testified that it is possible that as Sindee fell, she could have hit the sidewall or a metal railing below. He suggests that if Sindee hit the building as she fell this could possibly account for the additional horizontal distance when she finally landed. However, he also confirms that there "appears to be no doubt that [Sindee] was extremely close, if not at the edge, extremely close to the edge of the railing" before she fell.

48 In his report, Dr Prakash does not take issue with the fundamental scientific methodology employed, suggesting instead improvements to some aspects of the experiments.

The kidnapping charge

49 The following facts are irrefutable. First of all, the accused did not seek Neo or Kittiduangrat's permission before removing Sindee from their care and control. Secondly, Neo, *qua* Sindee's father, was her lawful guardian. Thirdly, the incident took place at about 4.00am on 7 October 2004. The accused's sole line of defence or explanation in relation to the removal of Sindee from her parents' supervision is that she had no intention of kidnapping Sindee. She had merely intended to shield herself from Neo who had menacingly threatened her with a cleaver.

50 This explanation merits close scrutiny. Neo, Kittiduangrat and Joseph have given largely corroborative and consistent evidence of what transpired that fateful morning: they were all asleep when Sindee was removed from her bed; the door of the Flat (even when shut) could be easily prised open. Joseph insists he had not opened the door or allowed the accused to enter the Flat. He had instead been awakened by Kittiduangrat whereupon the threesome began a frantic search for Sindee.

51 There is a gaping schism between the accused's summary of events and the collective evidence of Neo, Kittiduangrat and Joseph. The two accounts cannot conceivably be reconciled and there is neither the slightest overlap nor the remotest compatibility. The accused positively and emphatically maintains that Joseph opened the door for her to enter the Flat and that Neo was sitting upright in bed armed with a cleaver.

52 Without any diffidence whatsoever, I reject the accused's version of events. Given the very recent and repeated incidence of palpable tension between the accused and the Neo family it is inconceivable that Joseph would have voluntarily opened the door at such a late hour to allow the accused into the Flat. Undeniably, the relationship between the accused and Neo had by late September 2004 deteriorated beyond repair or redemption. The last few encounters had invariably

ended on a sour note. Joseph testifies convincingly that he was anxious to avoid any further unpleasantness and keen to protect the Neo family from any further hostility or confrontation with the accused. Joseph had been present when the accused had turned up and created unpleasant scenes at the Flat. Indeed the accused herself concedes under cross-examination that Joseph had not been entirely happy to see her whenever she came to the Flat. Joseph himself candidly acknowledges that he was unpleasant to the accused and invariably took Neo's side each time a confrontation arose. Surely, allowing the accused unannounced into the Flat at such an odd hour would only have culminated in further acrimony? The fact that Joseph had previously attempted to conceal Neo's presence from the accused further corroborates Joseph's unwavering evidence on this crucial point. The accused's testimony that she "just barged" into the Flat when Joseph opened the door collides with reason and is simply not credible. Further, assuming *arguendo* that Joseph had indeed allowed the accused to "barge" into the Flat, it is inconceivable, given the tumultuous history between Neo and the accused, that he would then simply retire to the kitchen as suggested by the accused and/or standby quiescently while Sindee was abducted. Indeed, if Joseph had been awake, he would have been poised and ready to intervene instantly – to pursue and detain the accused.

53 Nor is it even remotely probable that Neo would have been armed with a cleaver at such an hour in bed. It is not disputed by the accused that Neo was a good father and deeply loved Sindee. It is implausible, to say the least, that Neo would retire for the night with a cleaver next to him – certainly not with a young child in close proximity. I cannot imagine for a moment that either he or Kittiduangrat would consciously risk the imminent possibility of an accident that such a circumstance might entail. Furthermore there is no suggestion that Neo had any reason to fear a physical assault or confrontation with either the accused or anyone else in the sanctity of the bedroom. Neo would otherwise have taken steps to fasten the Flat's front door more securely. The accused feebly suggests that Neo might have hurriedly taken the cleaver from the kitchen while Joseph opened the door. I categorically reject such a suggestion. Why would he then retire to the bedroom where his wife and Sindee were sleeping? It is evident that when push comes to shove, Neo is no shrinking violet. Had he indeed been alerted to the accused's presence, he would have taken immediate steps to bar her entry into the Flat and/or the bedroom so as to pre-empt any stormy antagonism. He would not by any stretch of imagination have risked a confrontation in the bedroom in such circumstances.

54 The accused claims that she knocked on the windowpane when she saw the light from the television in the front bedroom. She adds that Neo slept in this room with Joseph. I am not at all persuaded that this is correct. There is no reason to disbelieve Neo's contention that after Joseph moved into the Flat, he slept with Kittiduangrat and Sindee in the rear bedroom. I accept the Prosecution's submissions on this charge and find as a matter of fact that the accused stealthily entered the Flat uninvited and unannounced. Her entry into the Flat was entirely unanticipated by Neo, Kittiduangrat and Joseph.

55 The accused steadfastly maintains that she picked Sindee up from the bed in order to shield herself from a potential attack from Neo. That is simply absurd. Had she seen Neo sitting upright in bed with a cleaver, it is most improbable that she would have ventured further into the room, let alone gone as far as to remove Sindee from Neo's bed; that would only have made the possibility of an attack from Neo even more imminent. Nor can I imagine that Neo would have allowed the abduction to occur without reacting instantly; if anything, he would have created a huge commotion that would have alerted both Kittiduangrat and Joseph and inspired their prompt intervention. In such circumstances, the accused would clearly not have been able to make a clean getaway with Sindee. Neo and/or Joseph would have pursued and apprehended her instantly.

56 At this juncture, I should perhaps make some observations about the credibility of Neo,

Kittiduangrat and Joseph. I am satisfied that Neo and Joseph recounted the events of the morning of 7 October 2004 without embellishment. They corroborated each other and Kittiduangrat in virtually all material aspects and managed to render a coherent and logical account of the sequence of events. Their evidence survived unscathed by a searching cross-examination that sought to tarnish their credibility with *inter alia* references to an unsavoury history of pimping.

57 I am particularly impressed by the steadfastness of Kittiduangrat's testimony. Clearly grief-stricken and visibly inconsolable over her daughter's tragic demise, she nevertheless emerged as a lady of reliable character who literally lived for the welfare of her daughter. Defence counsel's attempts to probe her character and test her evidence were met in a forthright manner and if anything, further reinforced her credibility. She was adamant when she denied any knowledge of Neo's liaison with the accused until 3 October 2004. I categorically reject the accused's assertions that Kittiduangrat had not reacted adversely to her presence when she purportedly spotted the accused with Neo and Sindee previously. If indeed Kittiduangrat had not reacted adversely during previous encounters, why then did the accused turn tail and flee on 3 October 2004? The suggestion that Kittiduangrat was on that occasion armed with a knife is but another flight of fancy that does not stand up to scrutiny.

58 The only issue on which Neo and Kittiduangrat part company in their testimonies relates to the discovery of Sindee's disappearance. Given the confusion and overwhelming distress that they must have experienced at that juncture, such a discrepancy in their recollections can hardly be regarded suspiciously. On the contrary, in the circumstances of this case, it demonstrates that they made no attempt to tailor their evidence to dovetail or to corroborate each other on all material facts: see *Leo Fernando v Reg* [1959] MLJ 157.

59 An offence pursuant to s 363 of the Penal Code ("PC") is committed when a child is removed without consent from its lawful guardian. The object of s 361 of the PC is to protect minors. It is not incumbent on the Prosecution to prove that the offender had any designs on the child and/or that abduction has been for a particular duration.

60 In *The State v Sulekh Chand son of Dalel* AIR 1964 Punjab 83, it was held that an offence of kidnapping from lawful guardianship pursuant to s 361 of the Indian Penal Code (1860) (which is *in pari materia* with s 361 of the PC) is perpetrated whenever a minor is taken from the keeping of her lawful guardian without consent; the need for any additional intention of the abductor (*eg* kidnapping with the intention to compel marriage or with the intention to wrongfully confine pursuant to ss 364–369 of the PC) is irrelevant. The offence of kidnapping consists solely of intentionally *taking* a minor from the keeping of her lawful guardian; no motive or particular purpose need be established. The term *take* signifies possession or the assumption of control. The offence does not need to be preceded or accompanied by force and the consent of the minor is quite irrelevant. In *Chhajju Ram Maru Ram v The State of Punjab* AIR 1968 Punjab 439 at [6], the court rightly declared:

In determining whether a person takes a minor out of the lawful keeping of its guardian, the distance is immaterial. ... [E]ven if a person takes a minor girl without the consent of her guardian to a distance of twenty or thirty yards ... it would amount to taking her out of the keeping of her lawful guardian as required by Section 361 of the Indian Penal Code.

61 The accused's version of events simply does not fall within the realm of reason or possibility. In the result, I conclude that the Prosecution has proved the necessary ingredients to ground an offence under s 363 of the PC. I accordingly convict the accused of the kidnapping charge. I now turn to address the culpable homicide charge.

The culpable homicide charge

62 I have concluded that the accused had furtively entered the Flat and kidnapped Sindee at around 4.00am on 7 October 2004. I am also convinced that her version of events relating to a cleaver wielded by Neo was entirely fabricated in an audacious attempt to misguide the court that Sindee's abduction was indeed justified. Neo most definitely did not have a cleaver with him at the material time. That much is crystal clear. It is amply evident that the accused had grave misgivings towards Neo. She was deeply and irrevocably upset with him for not repaying the outstanding loans. All feelings of romantic intimacy between them had long since evaporated. The accused had become obsessed with recovering her loan. She had deliberately and tenaciously lurked about the Block for some time.

63 Why did she kidnap Sindee? The fact that she did this in clandestine and nothing short of bizarre circumstances casts an altogether negative slant on her intentions in relation to Sindee. The fact that she has attempted, and implausibly at that, to veil her actions with a gossamer-thin fabrication of lies seriously undermines her credibility. She has been far from candid in recounting the events of that fateful morning. Her unfounded claims that she knew that Neo was *immediately* "running after me" after she abducted Sindee and that there were "people running after her" are patently detached from reality and illustrative of the imaginative nature of her evidence. She had in fact made a "clean" getaway before the search started.

64 It is imperative to carefully scrutinise and assess the entire factual matrix as well as the accused's evidence in order to decipher and determine the actual sequence of events culminating in Sindee's fall. Having rejected the accused's claim that she had snatched Sindee to shield herself, the first question that springs to mind is what inspired the accused's decision to mount the Block with Sindee in the first place. Nobody was pursuing her at that juncture; I accept Neo, Kittiduangrat and Joseph's evidence that it took them sometime to react to Sindee's disappearance. Sindee was by no means easy to carry. Weighing a hefty 25kg, she was a somewhat heavy child. If the accused's intention was merely to abduct Sindee, she could just as easily have left the Block. Why take the stairs? The accused was no stranger to the Block or its environs. The route downstairs would have allowed her to leave the vicinity of the Block immediately without the imminent risk of confrontation with Sindee's parents. Her decision to mount the Block hardly evinces a desire to hurriedly leave the Block; or an intent to put as much space as she possibly could between herself and Sindee's parents.

65 It is also odd, if not totally baffling why, by her own admission, she subsequently sought to minimise the prospects of Sindee's cries being heard by other residents of the Block. In her testimony, she affirmed that on 28 September 2004 when Joseph had attempted to assault her, she immediately ran up to a group of eight elderly persons "for protection" at the void deck of the Block. In addition, on an earlier occasion when Joseph had attempted to push her, she claimed to have shouted "molest" loud enough for the neighbours to hear so as to deter him from harming her. I conclude that the accused is more than capable of seeking protection should any threat of harm to her safety or well-being arise. She acknowledges during her testimony that when Sindee cried out, she faced Sindee outwards rather than towards the adjoining flats. This is also expressly articulated in her written police statements. There was decidedly nobody hot on her heels. Awakening the adjoining flat residents would have afforded her the best possible protection from Neo as well as Kittiduangrat if they were indeed a threat to her. When pressed to clarify why she did not wish to arouse the adjoining flat dwellers, her tentative responses were neither coherent nor credible.

66 The accused is either unwilling or unable to state at precisely which level of the Block she finally halted. She claimed that she was "out of breath" and then subconsciously went to the railing "to get some air". She goes on to state that she had hoped that by moving Sindee closer to the

railing she could calm her down. On being queried by Mr Wong Kok Weng ("Mr Wong"), on behalf of the Prosecution why this was likely, she tersely responded with "I don't know, I just went there".

67 It is extraordinary that the accused should have brought Sindee so dangerously close to the railing. Sindee was by then awake, crying and in obvious distress. If the accused was so concerned about being confronted by her pursuers it is incongruous that she should choose to run the imminent risk of actually exposing herself by taking Sindee to the railing. Sindee's cries from that position could and would then be broadcast, and perhaps even amplified in the stillness of the early morning, to a potentially wider area. Her parents could and would then have heard her cries thereby exposing the accused herself to her alleged "pursuers". One would think that the most prudent course of action for the accused in the circumstances would be to take refuge in the stairwell rather than expose herself in an open corridor, if she was indeed concerned about being detected. It is accepted that some 15 to 20 minutes lapsed from the time Kittiduangrat discovered that Sindee had been abducted until her actual fall. This would have afforded the accused ample time and opportunity to gather her wits and recover her composure. She had not yet been located. The search party had not ascended the Block and/or caught up with her. Why did not the accused simply leave Sindee behind and make her getaway instead of taking her to the railing and exposing herself to "real danger"?

68 The accused has been consistently able to furnish a fairly comprehensive narrative of events and provide a reasonably lucid history of her relationship with Neo. It is deeply troubling and puzzling therefore that when she is pressed on why she chose to carry Sindee to the railing and queried about the precise circumstances that culminated in Sindee's fall, her responses and explanations invariably assume a distinctly incoherent and inconsistent quality. In his closing oral submissions, Mr Subhas Anandan ("Mr Anandan"), the accused's counsel, quite candidly and properly acknowledged, "there are things that have to be explained that are not explained. The accused herself is not able to give us clear instructions or give evidence in this court to say how [*sic*] the incident of the child dropped".

69 When requested by Mr Wong to demonstrate the proximity of Sindee's position to the railing, I noted that the accused abruptly modified her posture illustrating how she had carried Sindee once she grasped the thrust of the questioning. She had initially indicated that the mid-point of Sindee's body, that is to say the centre of gravity, was clearly below the upper end of the railing. She subsequently noticeably and literally altered the position by shifting the model dummy higher so that the mid-point of Sindee's body was at or about the upper end of the railing just prior to the fall. This would arguably have lent some tangential support to the suggestion that Sindee could have fallen accidentally.

70 Dr Ho, upon observing the accused's re-enactments, opined that it was unlikely that the accused could have held Sindee so high up relative to the railing. This appears to be a plainly commonsensical view. Firstly, Sindee was a heavy child. Secondly, the accused herself was not of sturdy build. Thirdly, having carried Sindee for some distance up the stairs the accused must have been tired. Finally, and most crucially, if, as the accused claims, Sindee was "holding" the railing, it is highly implausible that *any* of the positions the accused reprised accurately represented the position of the accused and Sindee just prior to the fall.

71 How then did the fall occur? The accused initially stated that she pulled Sindee away from the railing "to come down to the corridor floor". When queried whether this meant she was simultaneously "pulling" Sindee down and towards her, she became agitated and evasive. After prevaricating, she reiterated that she pulled Sindee away from the railing and then placed her down on the corridor floor.

72 A pivotal issue that arises in relation to the accused's version of events is the "grip" that

Sindee allegedly had on the railing. For the accused's assertions to bear even a modicum of credibility, there must be at least some basis for suggesting that Sindee could have managed to hold or grasp the upper railing. Dr Ho is unequivocal in categorically rejecting any such suggestion. Given both the circumference of the relevant railing as well as the dimensions of Sindee's hand, he unwaveringly and emphatically opines:

[I]t's *very difficult for her to have a firm grasp*. She ... it didn't really exceed even three-quarters of it. So in order to have a firm grip of it, you really have to go round the railing in order to pull oneself up. [emphasis added]

In addition, Dr Ho was firmly of the view that given Sindee's weight, hand dimensions and grip:

[S]he would require very great effort in order to climb over ... definitely cannot climb over it with one attempt at all. ... I think it *is very highly unlikely she can do it*.

...

[I]f she had been trying to pull the child away, I would say that the child would just release the grip and fall onto the corridor floor.

[emphasis added]

73 It bears mention that neither the accused nor her counsel suggest that Sindee attempted to climb over the railing. It inexorably follows that the fall must have been triggered by some horizontal force (received and/or generated) by Sindee's body while she was being held close to the railing.

74 I am satisfied that if the accused's version of events is correct, Sindee would have been pulled back towards the corridor floor and fallen on it rather than over the railing. The accused's responses and attempted explanations as to how the fall took place are not only vague and incoherent but most implausible.

75 It is highly significant that the accused's several police statements make no express assertion to any *struggle* put up by Sindee prior to her fall. It is pertinent to reiterate that her statements clearly articulate the material aspects of her version of the events leading to the incident except for the immediate circumstances preceding the fall. While the accused tentatively suggested during cross-examination that Sindee might have kicked out against her body and somehow catapulted over the railing, she was unable to buttress or substantiate this suggestion with any degree of conviction. Both Dr Tay and Dr Ho are of the view that had Sindee kicked out with the degree of force required to propel her over the railing, it would be unlikely that the accused would not register or remember the impact. The kick "must be a very powerful kick". I am satisfied that no such kick occurred. Dr Ho, after the accused's re-enactments, could not account for the fact that the child fell over the railing unless some "force [was] applied to the child". Given that Sindee undisputedly fell from below the tenth floor (see [100] below) and taking into account the horizontal distance she traversed, it really cannot be disputed that actual force was applied to Sindee, precipitating her fall from the Block.

76 The Prosecution is not obliged to supply or prove a precise motive before a person is convicted of culpable homicide: *Lau Lee Peng v PP* [2000] 2 SLR 628. The Court of Appeal declared in that case, at [43], that the only burden on the Prosecution is to show that the accused intended to inflict the injuries caused:

The question may be asked what was the reason or motive for the killing. The prosecution had

not expressly suggested any motive and *it was not necessary to do so*. Its only burden was to show that the appellant intended to inflict the injuries caused, and this burden it had discharged beyond a reasonable doubt. [emphasis added]

The law on circumstantial evidence

77 Often perpetrators take pains to conceal their crime. Direct evidence of the precise circumstances preceding a homicide will usually be unavailable. In such instances, compelling circumstantial evidence may be relied on to infer guilt. The Prosecution's case against the accused, not surprisingly, is premised entirely on circumstantial evidence. It is trite law that the circumstantial evidence on which the prosecution relies must in the final analysis "inevitably and inexorably" lead the court to a single conclusion of the accused's guilt: see *Ang Sunny v PP* [1965–1968] SLR 67 at 72, [14]. In *PP v Oh Laye Koh* [1994] 2 SLR 385, the Court of Appeal emphasised that the Prosecution did not carry a higher burden in the final evaluation of a case predicated upon circumstantial evidence as opposed to one based on direct evidence. The court declared at 392, [19]:

There is one and only one principle at the close of the trial, that of guilt beyond reasonable doubt, and this principle applies equally to cases where the prosecution evidence is wholly circumstantial as it does to those where direct evidence is adduced.

78 The law on circumstantial evidence in England is defined and described in *Blackstone's Criminal Practice 2004* (Oxford University Press, 2004) pp 1998–1999 in the following terms:

Circumstantial evidence 'works by cumulatively, in geometrical progression, eliminating other possibilities' (*DPP v Kilbourne* [1973] AC 729, per Lord Simon at p.758). Pollock CB, likening circumstantial evidence to a rope comprised of several cords, said:

One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.

Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of. (*Exall* (1866) 4 F & F 922, at p.929)

The principles on circumstantial evidence stated in *Director of Public Prosecutions v Kilbourne* [1973] AC 729 ("Kilbourne") and *Regina v Exall* 4 F & F 922; 176 ER 850 ("*Exall*") have been recently affirmed in *R v Collings* [2004] EWCA Crim 1204.

79 While the decisions in *Exall* and *Kilbourne* have not recently been expressly adverted to or applied by the Singapore courts, nevertheless the approach here appears to coincide exactly. In *Oh Laye Koh v PP* [1994] SGCA 102 ("*Oh Laye Koh*"), the Court of Appeal declared at [16]–[17] that:

[A]ll the evidence would have to be considered cumulatively to see if the charge has been proved beyond reasonable doubt. Whilst each piece of evidence of a circumstantial nature may be insufficient of itself for the purpose, the various strands of evidence considered together in totality may be strong enough to prove the guilt of the accused beyond reasonable doubt. That is trite law. The trial judge himself adverted to this when he observed that circumstantial evidence was akin to "a rope consisting of several strands each strengthening the other".

It followed that even though the individual strands of circumstantial evidence might or might not

have been sufficient of themselves to convict the appellant, the composite picture they presented when considered cumulatively, and taken together with the adverse inference drawn from the appellant's silence, convinced us of his guilt.

80 The Australian position on the burden of proof in relation to circumstantial evidence is also similar. In *Peacock v The King* (1911) 13 CLR 619 at 634, Griffith CJ in the High Court of Australia pointed out:

The rule is sometimes stated that the circumstances must be such as to be inconsistent with any reasonable hypothesis other than the guilt of the accused.

In *Plomp v The Queen* (1963) 110 CLR 234 at 252, Menzies J observed:

[W]here circumstantial evidence is relied upon to prove guilt, ... to enable a jury to bring in a verdict of guilty it is necessary not only that it should be a rational inference but the only rational inference that the circumstance would enable them to draw ...

81 The principles articulated in these cases have been affirmed recently in the High Court of Australia (*Knight v The Queen* (1992) 175 CLR 495). The accused in a case based on circumstantial evidence does not have to point to evidence of a conclusion consistent with innocence: *R v McIntyre* [2000] NSWCCA 6.

82 The leading case in Hong Kong on this area is *Kwan Ping-bong v The Queen* [1979] HKLR 1 at 5 where it was *inter alia* stated, *per* Lord Diplock:

The requirement of proof beyond all reasonable doubt does not prevent a jury from inferring, from the facts that have been subject of direct evidence before them, the existence of some further fact, such as the knowledge of intent of the accused, which constitutes an essential element of the offence; but the inference must be compelling – one (and the only one) that no reasonable man could fail to draw from the direct facts proved.

83 These principles have been recently approved and applied in *Tang Kwok Wah, Dixon v Hong Kong Special Administrative Region* [2002] 40 HKCU 1, *Yau Chiu Ming v HKSAR* [2003] 530 HKCU 1, *Law Ng Yuen v HKSAR* [2003] 367 HKCU 1 and *HKSAR v Ma Yee Keung* [2000] 4 HKC 713.

84 This "only reasonable inference" test was also said, by the Hong Kong Court of Final Appeal in *Tang Kwok Wah, Dixon v HKSAR* at [20], to be the same as the test in the Australian case of *Plomp v The Queen* ([80] *supra*) at 243:

[T]he ordinary rule relating to circumstantial evidence [is]... that you cannot be satisfied beyond reasonable doubt on circumstantial evidence unless no other explanation than guilt is reasonably compatible with the circumstances.

85 It can be seen from this overview examining how common law jurisdictions approach and apply circumstantial evidence in criminal cases that certain common threads are invariably present. The general process of drawing inferences from evidence is similar in both civil and criminal cases. The burden of proof, however, is altogether different. In a criminal case, proof beyond any reasonable doubt is required. Grave suspicion is no substitute for proof beyond reasonable doubt. In the same vein, moral certainty cannot replace the requirement for explicit and certain evidence. The various links in the interlocking chain of evidence must establish a complete chain that rules out any reasonable likelihood of an accused's innocence. Guilt must be the only rational inference and

conclusion to be drawn from the complete chain of evidence. In assessing the circumstances, the court should discount fanciful or speculative possibilities. However, if more than one reasonable inference can be elicited from the factual matrix, the inference most sympathetic to the accused ought to be accepted. I also find interesting the observations of the editors of *The Penal Law of India* (Law Publishers (India) Pvt Ltd, 11th Ed, 2000) vol 3, at p 2664 that:

[I]n a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, *such absence of explanation or false explanation would itself be an additional link which completes the chain.* [emphasis added]

Drawing adverse inferences from lies

86 The appropriate inference to be drawn in each case depends on the circumstances in the case, and is premised upon ordinary common sense: see *Oh Laye Koh v PP* ([79] *supra*) which held at [14]–[15] that:

[T]he trial judge was at liberty to draw any inferences as may appear proper from the failure of the appellant to give evidence on oath, including the ultimate adverse inference that the appellant was guilty of the offence charged. In *Haw Tua Tau v Public Prosecutor*, Lord Diplock observed that it would be hopeless to expect jurors or judges, as reasonable men, to refrain from drawing inferences from the accused's failure to exercise his right to give evidence, including inferences adverse to the accused. After all, it is only the accused who is in a position to contradict the evidence of the prosecution on matters that are peculiarly within his own knowledge or to displace a natural inference as to his mental attitude at the time of the alleged offence that, in the absence of some other explanation, would properly be drawn by any reasonable person from his conduct at that time. However, as Lord Diplock went on to observe at p 53:

What inferences are proper to be drawn from an accused's refusal to give evidence depend upon the circumstances of the particular case, and is a question to be decided by applying ordinary commonsense ...

This was rightly recognised by the trial judge at the remitted trial. Essentially, the process would have involved the trial judge's consideration of whether on the totality of the prosecution witnesses' evidence (as tested in cross-examination), together with any inference that could properly be drawn from the accused's silence, the accused's guilt could be established beyond reasonable doubt. It appeared to us that the trial judge was eminently justified in drawing an adverse inference from the appellant's silence. The circumstantial evidence stacked up against the appellant at the close of the prosecution case had been so damning in nature as to demand that he proffered some explanation for the death of the girl who was last seen alive with him. This was so notwithstanding that the medical evidence could not establish for certain that the death was homicidal. Having chosen to remain silent, the appellant ran the risk of having an adverse inference drawn against him under s 196(2) of the CPC. By not rebutting the evidence, which as it then stood would have warranted his conviction if unrebutted, the appellant's silence presented the trial judge with an additional factor to consider in assessing whether the appellant's guilt had been established beyond reasonable doubt. That is precisely the effect of an inference contemplated by s 196(2). *In the trial judge's own words, the appellant's silence was an additional link which completed the chain of evidence.* By this, we took the trial judge to mean

that the appellant's silence, considered cumulatively with the other evidence, was sufficient to establish the appellant's guilt beyond reasonable doubt.

[emphasis added]

87 I note, however, that while *Oh Laye Koh* was a case where the accused elected not to give evidence upon being called upon to rebut the Prosecution's case, it nevertheless affords a useful example of circumstances where it is permissible to draw an adverse inference. The proper inference to be drawn from the conduct of an accused person, whether it is silence, the absence of and/or a false explanation, always requires careful evaluation. These different situations are but different facets of the same issue. Why is an accused not forthcoming or candid? Is an accused's silence or are his or her lies precipitated by guilt or some other reason? A particularly vexing issue is precisely what inference should be drawn from the silence of an accused.

88 The Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") permits adverse inferences to be drawn from the silence of an accused person. Section 123(1) of the CPC states:

Where in any criminal proceedings against a person for an offence evidence is given that the accused, on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so charged or informed, as the case may be, the court, in determining whether to commit the accused for trial or whether there is a case to answer, and the court, in determining whether the accused is guilty of the offence charged, *may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.* [emphasis added]

89 Further, s 196(2) of the CPC states:

If the accused —

(a) after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or

(b) having been sworn or affirmed, without good cause refuses to answer any question,

the court, in determining whether the accused is guilty of the offence charged, *may draw such inferences from the refusal as appear proper.*

[emphasis added]

90 Pursuant to these provisions in the CPC, when an accused is silent on material issues in certain specific circumstances, the court is permitted to draw such inferences as may appear proper, including an adverse inference. For example, the ultimate adverse inference was drawn against the accused in *Oh Laye Koh* when he failed to give any evidence. However, a court should not draw an adverse inference if the accused can offer a plausible explanation as to why he failed to mention a material fact in his defence. The burden of proof, however, is not shifted or removed from the Prosecution simply because an adverse inference is drawn against the accused. The court remains obliged to evaluate the entire evidence in considering whether the Prosecution has discharged its

burden of proof.

91 The effect of an adverse inference against an accused person is that once it is drawn it can be employed to support or corroborate aspects of the Prosecution's case.

92 An accused's deliberate lies on material issues can corroborate other evidence against him (*PP v Yeo Choon Poh* [1994] 2 SLR 867 applying the test in *Regina v Lucas (Ruth)* [1981] QB 720). The decision to draw such an adverse inference from deliberate lies again must depend on the nature of the evidence and the circumstances in which the lies have been made; do the circumstances betray a consciousness of guilt? One must realise that lies are not invariably or inevitably engendered by a realisation of and/or desire to conceal guilt. Lies may be told in a misguided attempt to support or embellish an explanation, to deflect blame, to minimise embarrassment or to conceal some other behaviour. The human mind responds in a myriad ways to stress and/or embarrassment without necessarily being actuated by an underlying intention to conceal guilt. There is not and cannot be any cut and dried approach of universal application in deciphering the human mind. The telling of lies cannot invariably be equated with guilt. Only when lies are clearly demonstrated to be a conscious attempt to conceal guilt can they then be employed to support other evidence adduced by the Prosecution; they cannot however by themselves make out the Prosecution's case: *R v Strudwick and Merry* (1994) 99 Cr App R 326 at 331, *per* Farquharson LJ:

Lies, if they are proved to have been told through a consciousness of guilt, may support a prosecution case, but on their own they do not make a positive case of manslaughter or indeed any other crime.

In essence, a lie told by an accused can only *strengthen* or *support* evidence if it is clear that (a) the lie was deliberate, (b) it relates to a material issue and (c) there is no innocent explanation for it: Archbold, *Criminal Pleading, Evidence and Practice 2005* (Sweet & Maxwell, 2005) at para 4-402.

93 It is the Prosecution's submission that the accused had lied about material issues in order to cover her guilt. The Prosecution argues that this, compounded by the overwhelming circumstantial evidence against the accused, inexorably leads to the conclusion that she intentionally caused Sindee to fall from one of the floors of the Block. It also appears that the accused is not forthcoming in explaining what immediately preceded Sindee's fall. Does s 108 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") apply in these circumstances?

94 Section 108 of the EA provides:

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

95 Section 108 of the EA does not impose any burden on the accused to prove that no crime was committed (*Sarkar's Law of Evidence*, (Wadhwa and Company, 14th Ed, 1993) at pp 1421 and

1422). Section 108 of the EA cannot relieve the Prosecution from its burden of proof. It can only be employed to address certain exceptional cases where it would be impossible or at any rate disproportionately difficult for the Prosecution to establish facts which are “especially” or “particularly” within the knowledge of the accused which an accused can prove without difficulty or inconvenience.

96 The Court of Appeal decision of *PP v Abdul Naser bin Amer Hamsah* [1997] 1 SLR 73 emphatically reiterates that s 108 of the EA applies in extremely limited and narrow circumstances. It does not have the effect of imposing on an accused the onus of proving that no offence was committed even if the accused is the sole witness. It cannot and does not apply to the present factual matrix to shift or ameliorate the Prosecution’s evidential burden. The Prosecution must stand on its own intrinsic merits and not on the frailty or paucity of the defence.

97 In the present case, it is incontrovertible that Sindee was literally in the accused’s hands and at her mercy just prior to falling down. They were alone. It is clearly well within the accused’s knowledge precisely how and why the deceased fell. The accused unfortunately chose to be evasive and vague on this very critical issue. Her version of how Sindee fell shifted dubiously during her testimony and can only be described, all said and done, as untenable. Both Dr Ho and Dr Tay have unequivocally testified that given the accused’s re-enactment of events and her evidence, Sindee should have fallen safely onto the corridor floor and not over the railing.

98 It is clear beyond peradventure that the relationship between Neo and the accused was not merely fractured but fragmented beyond repair just prior to the incident. While the accused has attempted to deflect attention from this aspect of the relationship, it bears mention that the encounters they had immediately preceding the incident ended acrimoniously, leaving both with a bitter aftertaste. If the accused is to be believed, she had been assaulted by both Neo and Joseph. It would be fair to conclude that the accused was consumed by acute misgivings and resentment towards Neo. She was obsessed with recovering the outstanding loan. In the course of the hearing, Mr Anandan candidly acknowledged that there was “hostility” towards Neo. Her bizarre behaviour in staking out the Block and Kittiduangrat’s workplace amply illustrates her obsessiveness. The accused repeatedly asserts that she had a warm relationship with Sindee. That might once have been the case. However prior to the incident, according to Joseph and Neo, when the accused had raised her voice in Sindee’s presence while quarrelling with Neo, Sindee had cowered in fear. She had certainly been oblivious to Sindee’s feelings then. The fact remains that she kidnapped Sindee stealthily in completely bizarre and inexplicable circumstances. Had she truly harboured any feelings of warmth or affection for Sindee, she would never ever have contemplated removing Sindee from the Flat under any circumstances; it is plain that Sindee would have been terrified once she understood that she had been surreptitiously abducted.

99 Further, if the accused was genuinely concerned about Sindee’s well-being, she would have ascertained that no harm had come to Sindee after she purportedly “fell” onto the corridor. The accused’s baffling conduct in failing to do this severely undermines her protestations of innocence and alleged tenderness for Sindee.

100 During the hearing, Mr Anandan informed the court that the Defence would take the position that Sindee fell from around the seventh to ninth floors of the Block or “that sort of height”. This concession is rightly made in light of two significant factors. Firstly, Dr Chui, after taking into account Sindee’s injuries, opined that she probably fell from the lower floors. Secondly, the accused was carrying Sindee, who weighed 25kg, in addition to a backpack weighing between 4kg to 5kg; the Defence correctly contends in this regard that the accused after running up a few flights of stairs while carrying a “25kg Sindee would have been extremely tired”.

101 Sindee could only have fallen if she had been literally carried to or deliberately positioned at the edge of the railing. If there had indeed been a struggle while Sindee held onto the railing as alleged by the accused, I cannot comprehend how she could have accidentally fallen or tipped over the railing. If the accused had tried to "shake her" from the railing, Sindee would certainly have been pulled inwards, landing on the corridor floor. The police statement made by the accused soon after the incident is pertinent:

... I carried the girl to face the outside of the corridor. I heard running steps towards me and I wanted to run away without the girl as she was getting too heavy for me.

I wanted to put her on the floor of the corridor but *she was holding onto the railing. I did try to shake her off the railing.*

When I heard the foot steps nearer, I panicked and I just ran away releasing my hands and thinking, I dropped the girl on the floor of the corridor.

[emphasis added]

102 The credibility of this account is entirely demolished by Dr Ho's irrefutable evidence that Sindee could not effectively "hold" on to the railing. There was therefore no basis to begin with for the accused "to shake her off the railing". The accused was plainly untruthful in her account of what transpired just prior to the fall. Furthermore, Dr Tay's finding that the distance between the point where Sindee landed and the foot of the Flat was the result of the application of a horizontal force cannot be seriously challenged. Even Dr Prakash, the defence expert, conceded that a falling child who flayed her limbs would not be able to create a horizontal velocity by such action. I am of the view that Dr Prakash's suggestion that Sindee's body might have hit the side of the Block as it fell is but a remote if not entirely fanciful possibility. Granting that Dr Tay's experiment involved an inanimate dummy, the unassailable fact remains that not *one* of the 30 throws from different heights resulted in contact with railings or the side of the Block. For Sindee to plummet from below the 12th floor, it would have taken roughly two seconds and gravity itself would hardly have allowed contact of her compact body with the side of the Block. The further suggestion by Dr Prakash that a "bounce" could account for the distance between the edge of the Block and the point where the body eventually landed is highly implausible. I accept Dr Tay's evidence that even assuming *arguendo* Sindee had hit the side of the building as she fell, this would actually have impeded the horizontal velocity, thereby reducing, rather than increasing, the horizontal distance from the foot of the Block to the point where she landed. It would have been what he terms an *inelastic* collision. Also, significantly, there were no apparent injuries or abrasions on Sindee's body consistent with or suggesting that her body had impacted with the building as she fell. Dr Chui maintains that there was no objective evidence suggesting that the body hit a railing or a side of the Block. After careful evaluation of the evidence, I am satisfied by the findings of Dr Tay's experiments that only a horizontal force, that is to say a pushing or projecting force, could account for the eventual distance between the Block and Sindee's body. Both Dr Ho and Dr Tay were firmly of the view that apart from a force applied or exerted by the accused, only a "strong" kick from Sindee could account for such a horizontal velocity. However, the force and impact of such a kick would be such that the accused would have distinctly remembered it. There is, it bears reiteration, no real reference in any of the accused's statements to any real struggle that might have ensued with Sindee, let alone a hard and forceful kick from Sindee just prior to the fall. Nor is there any evidence of any injury sustained by the accused consistent with such a kick. Indeed, the accused in one of her statements declared with a conspicuous lack of conviction, "I don't know how she fell". How can this possibly be true? This puts an incredible strain on her credibility. It would be quite right to state that generally in criminal cases, the initial statements made by the accused to the police are of crucial importance in assessing

credibility; *cf Peacock v The King* ([80] *supra*) at 629.

103 The accused has been manifestly untruthful on a continuum of significant issues commencing with the kidnapping of Sindee and culminating in her fall from the Block. As a general proposition I accept Mr Anandan's submission that a flawed witness may still be telling the truth on some matters: *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464 at [44]; *Jimina Jacee d/o CD Athanasias v PP* [2000] 1 SLR 205 at [22]; *Mohammed Zairi bin Mohamad Mohtar v PP* [2002] 1 SLR 344 at [28]; *Ng So Kuen Connie v PP* [2003] 3 SLR 178 at [34]. In *Khoon Chye Hin v PP* [1961] MLJ 105 at 107, Thomson CJ incisively observed:

If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong.

I agree. However, in the present factual matrix, the accused's evidence has been shown to be flawed and untenable on all disputed issues. In so far as the key events of 7 October 2004 are in issue, I unreservedly accept the evidence of Neo, Kittiduangrat and Joseph as to what transpired. The accused has told deliberate untruths in a misguided effort to conceal her obvious guilt. Those lies were told in a desperate and blatant attempt to mask her culpability in causing Sindee's death; the lies demonstrated a consciousness of guilt and form an additional link that reinforces the already complete chain of evidence.

104 Once the reasonable possibility of an accident having occurred is eliminated, only one compelling conclusion can flow from the amalgam of events that fateful morning:

- (a) the evidence relating to the kidnapping;
- (b) the accused's ascent of the Block;
- (c) the accused's inexplicable conduct in trying first to suppress Sindee's cries and then taking her to the railing;
- (d) the height of the railing relative to Sindee;
- (e) Sindee's inability to maintain any sort of grip over the railing;
- (f) the distance between Sindee's body and the edge of the Block; and finally,
- (g) the absence of any credible evidence pointing to a struggle,

cumulatively combine and coalesce to create an irrefutable and interlocking chain of inference that Sindee's fall was intended and caused by the accused. Dr Tay was emphatic that "definitely there was a force acting on the body of this child in order to propel it out from the building".

105 The circumstantial evidence against the accused is compelling. The accused faced no immediate threat given that her pursuers were nowhere close when she brought Sindee to the railing. She had adequate time and opportunity to leave Sindee behind either in the stairwell or corridor and to promptly make a getaway. It is entirely inconceivable that the accused could have thought, as she strenuously maintains, that Sindee had fallen on the corridor floor instead of over the railing. She

could not possibly have laboured under such an obvious delusion. Sindee's fall could not have been and was not the result of an accident. The various pieces of established and irrefutable evidence resemble the pieces of a jigsaw puzzle which, when properly assembled, form a complete composite picture pointing to only one possible conclusion: the accused's guilt. The picture is clearly defined and leaves no room for reasonable doubt. I am satisfied that the accused caused Sindee to fall from the Block knowing full well that the injuries resulting from such a fall were likely to cause her death. Accordingly, I convict the accused of the culpable homicide charge as well.

Conclusion

106 Although the accused suffers from a serious and destabilising mental illness, she comes across as a quick-witted but forlorn individual. She was able by and large to respond promptly to the Prosecution's probing cross-examination. Indeed, she clearly had the upper hand in some of the exchanges with the Prosecution. She also impressed me as having a good memory with the ability to precisely, albeit selectively, recollect prior events and dates. Nevertheless, her evidence is fraught and flawed with patent evidential infirmities.

107 Regrettably, she does not realise or acknowledge that she is not well. She has refused all medical attention. This, as painstakingly explained in the unchallenged and thorough assessment of Dr Phang, has nonetheless affected neither her ability to communicate effectively, as amply illustrated by her testimony, nor more importantly, her ability to distinguish between right and wrong.

108 Her illness, the onset of which took place sometime before the incident, has made her emotionally vulnerable and many facets of her conduct appear obsessive. Her behavioural patterns and thought processes, painstakingly evaluated and summarised by Dr Phang, can from time to time be wholly inexplicable and peculiar. Neo, sensing an opportunity to exploit her financially, took full advantage of her vulnerability. Perhaps grateful for his professed friendship and attention, she willingly and imprudently lent him substantial amounts of money without exploring or verifying either the basis for the alleged business needs or his professed affection and loyalty to her. The initial loan of \$10,000 was apparently obtained just a few days after Neo became intimate with the accused. Neo then proceeded unflinchingly and callously to betray her trust. Once her finances were depleted, he became cold and displayed his true colours. Their relationship duly soured and turned tempestuous when the unpalatable but inexorable reality that she had been no more than a sexual tool and financial resource hit home. She then became obsessed with the desire and need to recover the loans made to Neo. For some time prior to the incident she maintained a stake-out of the Block. She also kept a stake-out at Kittiduangrat's workplace. She harassed Neo. Neo treated her contemptuously. Their relationship became bitter. To buy time, he agreed to repay her with very modest instalments. He failed to do even that. The accused became increasingly agitated. She reacted irrationally.

109 Neo is both literally and figuratively a man of many vices. To a large extent, he is the co-author of this unfortunate and regrettable tragedy. Having said that, I do however accept that he was a good father to Sindee and loved her dearly. He would not have consciously risked her well-being. He never anticipated that his daughter would ultimately pay the price for his unscrupulous opportunistic conduct. Without discounting his many faults and granting that there are minor discrepancies, I accept Neo's account of the events of 7 October 2004. Kittiduangrat was a loving mother and made considerable sacrifices to enhance the quality of Sindee's life despite her manifest unhappiness with Neo's wanton ways. I have found Kittiduangrat to be a consistently honest and reliable witness.

110 The accused's obsessive pattern of thought and unsettled mind inexplicably caused her to abduct Sindee in bizarre circumstances in the early hours of 7 October 2004. Donning a black wig, she

stealthily entered the Flat and removed Sindee from her parents' bed. Only the accused can explain such extraordinary behaviour. She has however chosen not to do so. Instead, she has woven an elaborate embroidery of lies to explain what transpired in the wee hours of that morning. In the final analysis, however, the following facts are unassailable: the accused was neither invited nor allowed into the Flat by Joseph; she had no legitimate reason to either enter the Flat or, more outrageously, to remove Sindee from her bed; she had no rational basis to justify her ascent up the Block with Sindee; she was neither threatened nor pursued by Neo, Kittiduangrat or Joseph at that point in time; she could easily have run down the stairs and away from the Block unless she had some other ulterior or sinister motive that dictated otherwise. In the face of such overwhelming and damning evidence, her version of events cannot stand up to scrutiny.

111 Sindee could not have fallen from the Block without any active input from the accused. Inexplicably, the accused's otherwise "exemplary" recollection became vague and tentative when her conduct just prior to the fall was questioned and scrutinised. Why the abrupt change? Why was she no longer forthcoming in her responses? Her demonstration of how the incident occurred has been correctly rejected by the Prosecution's principal expert witnesses, Dr Ho and Dr Tay. Once Dr Ho's evidence on Sindee's inability to form any sort of grip over the railing is accepted, the accused's paltry explanation that she attempted to pull Sindee downwards while she was holding the railing is wholly undermined and demolished. Like Drs Ho and Tay, I have witnessed the accused's feeble attempts to re-enact the incident; I have also visited the scene of the incident. Given her physique, Sindee could not conceivably have climbed over the railing on her own. I conclude from the accused's evidence, compounded by objective factors such as the height of the railing as well as Sindee's weight, height and palm grip, that her fall could not have been accidental; see also [104] above. Sindee could not and would not have fallen unless she was lifted and/or placed in a position where her upper torso was above the railing. Some force must have been applied to her body by the accused to cause her to fall. The fall did not happen by accident; it was woven by the accused's design. I further find that the accused must have known that if Sindee fell, she would be injured in a manner that was likely to cause her death.

112 I cannot speculate on the reasons that actually inspired or prompted the accused to so callously abduct and eventually cause Sindee to fall to her death. Though the whys and wherefores have already been explored, it would be futile to attempt to rationally explain her conduct. The law recognises that often the reason for a killing is so securely concealed within an accused's mind that it may well be unfathomable. This is one such case. Her evidence is characterised by variegated and multi-layered untruths and improbabilities from beginning to end. I am satisfied that despite her obvious intelligence, the accused was prone to peculiar and obsessive behaviour as well as to displaying inexplicable traits from time to time. Possibly her illness played a significant role in prompting her behaviour that fateful morning. She remains an enigma wrapped and trapped in a serious ailment. As Dr Phang incisively observed after his detailed clinical examination of the accused while she was in remand:

At times, she was also inappropriate and even incongruous in her responses, with occasional vague paranoid ideas expressed. Her faculty of logical reason, while superficially intact, was on detailed psychiatric examination, evidently odd, queer and even bizarre. It was consistently evident that she was remote from normality, a general quality of early schizophrenia. [emphasis added]

The fact remains, however, that the accused could and can distinguish between right and wrong. Sadly, only when her relationship with Neo deteriorated irretrievably did she finally appreciate that he had toyed with her affections and exploited her financially. That tragically marked a turning point which set into motion a chain of events and responses on her part that were completely

unanticipated, unpredictable and bizarre. Given her conduct that fateful morning and the entirety of the evidence adduced, I am satisfied beyond any reasonable doubt that she intended to and did commit the two offences she has been charged with. I will set a convenient date so that counsel may address the issue of sentencing.

113 This is a desperately tragic case. Admittedly, the accused cannot be exonerated for her conduct; I am constrained to conclude my judgment, however, by pointing out that Neo must also acknowledge that his philandering and exploitative conduct was the catalyst that ultimately precipitated the accused's criminal acts. He has to live with this knowledge. He has irremediably failed Sinee even though he may never have intended or appreciated the unfortunate outcome of his conduct.

114 I would like to thank and commend Mr Wong and Mr Anandan for having discharged their duties with obvious professionalism and diligence. This was never a straightforward matter to begin with and the courtesy, equanimity and professional detachment which both counsel have amply displayed in the course of the hearing are exemplary. They have argued their respective positions strenuously without once resorting to unpleasantness or extreme stances. Drs Tay, Ho and Chui have also shown commendable industry both in grasping and deciphering the facts of this case. Finally, I want to commend and acknowledge Dr Phang for his very thorough and professionally objective analysis of the accused's medical condition. His evidence is both sound and compelling. His opinion has spared and saved the accused from both the prospect and conviction of a capital charge.

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