

Lim Thian Lai v Public Prosecutor
[2005] SGCA 50

Case Number : Cr App 8/2005
Decision Date : 04 November 2005
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ
Counsel Name(s) : Edmond Pereira (Edmond Pereira and Partners) and Andy Yeo (Allen and Gledhill) for the appellant; Tan Kiat Pheng and Christopher de Souza (Deputy Public Prosecutors) for the respondent
Parties : Lim Thian Lai — Public Prosecutor

Criminal Procedure and Sentencing – Statements – Admissibility – Whether statements recorded pursuant to one charge may be relied upon when convicting accused of different charge arising from same incident

Criminal Procedure and Sentencing – Statements – Voluntariness – Whether statements made by accused procured by police through threat and inducement – Whether accused having poor command of English language – Whether police failing to give accused warning under s 121(2) Criminal Procedure Code – Whether statements made by accused inadmissible – Section 121(2) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Proof of evidence – Confessions – Accused giving statements amounting to confessions – Accused retracting statements – Statements containing minor discrepancies – Whether accused may be convicted on uncorroborated retracted statements

4 November 2005

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal against a conviction under s 4(1) of the Arms Offences Act (Cap 14, 1998 Rev Ed) (“AOA”) as a result of which the appellant was sentenced to suffer the mandatory capital punishment. The charge on which the appellant was convicted read:

That you, LIM THIAN LAI ... on the 12th day of March 1997 between 8.30 p.m. and 9.30 p.m., at the carpark of Blocks 3/4 Beach Road, Singapore, did use an arm, namely, a 0.38 Calibre revolver, by discharging one round from the said revolver at one Tan Tiong Huat, male 42 years old, with intent to cause physical injury to him, and you have thereby committed an offence punishable under section 4(1) of the Arms Offences Act, Chapter 14.

We heard his appeal on 26 September 2005 and dismissed it. We now give our reasons.

The facts

2 On 12 March 1997, at about 9.00pm, a loud bang was heard in the vicinity of Ban Seng Eating House at Block 4, Beach Road. At about 9.11pm the police were notified that there was a man lying in a pool of blood at the car park located next to Block 4. Soon, the police and the ambulance arrived. The police officers saw a body lying in a supine position on the road beside a row of metal barricades. The ambulance officer, upon examining the body, pronounced that the person had died. It was later established that the deceased was Tan Tiong Huat (“the deceased”), a notorious illegal moneylender who operated at the Golden Mile, Beach Road, area.

3 The forensic pathologist, Assoc Prof Gilbert Lau, certified that the death was due to injuries

caused by a low calibre gunshot fired from a distance of more than 30m and from a slightly elevated position. No typical defence injury was found on the body.

4 Subsequently, from a tip-off by a person, who later became a prosecution witness ("PW21"), the police came to know that the appellant was involved in the shooting. By this time, the police efforts to trace the appellant proved futile as he had already left Singapore. Although the identity of PW21 was disclosed at the trial, pursuant to the request of the Prosecution, it was directed by the trial judge, V K Rajah J, to be concealed.

5 Despite all efforts, the police could not locate the appellant. It was only on 30 September 2004 that the Thai authorities handed the appellant over to the Singapore police. Apparently, soon after he fled to Thailand, the appellant was apprehended and held in custody by the Thai authorities for breaching the law there. Four Singapore police officers went up to Bangkok to escort the appellant back to Singapore. Among the four officers were Senior Station Inspector Zainal Abidin ("SSI Zainal"), Station Inspector Roy Lim ("SI Lim") and Station Inspector Han Khoe Juan ("SI Han").

6 Upon being brought back to the Police Cantonment Complex ("PCC") after the flight from Bangkok, the appellant was interviewed by SI Lim and SI Han whereupon he indicated that he was prepared to make a statement. The statement was recorded by SI Lim alone (marked at the trial as "P104") between 7.30pm and 8.25pm, without the aid of an interpreter. The next day the appellant was formally charged with the murder of the deceased under s 300 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC"). After the statutory notice under s 122(6) of the Criminal Procedure Code ("CPC") was read out to him, the appellant did not respond to the charge. Instead he merely wrote the Chinese characters "水落石出", meaning "the truth will come to light later". (This statement was marked at the trial as "P103"). Later, between 5 and 13 October 2004, four more statements were recorded from the appellant and were identified and marked as P105 to P108 at the trial. On the occasions when these four statements were recorded, a police interpreter who specialises in the Hokkien dialect, Ms Toh Bee Choon, was present. The four statements clarified what the appellant stated in P104.

7 The Prosecution's case essentially rested on three sets of evidence: (a) the five statements (P104-P108) made by the appellant to the police officers, (b) the evidence of PW21 and (c) the evidence of another witness, Tham Boon Hua ("Tham"). The appellant challenged the admissibility of the statements on the ground that they were not voluntarily made as he alleged that threats were uttered, and inducements offered to him by the police officers. The trial judge rejected the appellant's claim that the statements were not voluntarily made and admitted them.

Issues before us

8 Before us, the appellant canvassed much the same arguments as he did before the trial judge which, in the main, were the following:

- (a) The judge should not have admitted the five statements (P104-P108), on the ground that they were not made voluntarily.
- (b) The statements should not be relied upon by the court in convicting the appellant as there were numerous inconsistencies in them.
- (c) The evidence of PW21 and Tham was totally unreliable;
- (d) Taking an overall view of the evidence, bearing in mind that neither the gun nor bullet

was found and tendered in evidence and having regard to the appellant's evidence that an unknown gunman had shot the deceased, there was a reasonable doubt as to whether the appellant was in fact the person who shot the deceased.

Admissibility of the statements

9 We will first address the question as to the admissibility of the statements made by the appellant to the police officers. The appellant contended that the statements should not be admitted because they were not made by him voluntarily. The following were the main grounds of objection raised by the appellant at the trial:

(a) Threats were made to him by SI Lim and SI Han on the flight back from Bangkok.

(b) SSI Zainal induced him to make statements by promising to reduce the charge from one of murder to that of manslaughter if he would co-operate and admit to the charge. The appellant pointed out that in P104, SI Lim did not record that "there is no threat, inducement or promise given by anyone before or during the recording of the statement", a statement which SI Lim admitted that he would normally record as a matter of prudence.

(c) SI Lim had also repeatedly told the appellant that they were on the 18th floor of the PCC, thus instilling fear in the appellant's mind that he could be thrown down or beaten up, and, in the latter case, no one could hear his cries.

(d) No caution was administered to the appellant before P104 was recorded by SI Lim.

10 It should also be mentioned that the appellant asserted that SSI Zainal and SI Lim were lying when they said that SSI Zainal was not present when SI Lim recorded P104. The appellant submitted that SSI Zainal, being the leader of the team, would naturally have been involved in taking the statement and was, in fact, involved. SSI Zainal's explanation that, as the appellant is Chinese and he is not, there could be communication problems, was refuted as being hardly persuasive.

11 After an extensive *voir dire*, the trial judge held that the various statements made by the appellant were voluntary.

12 We will now examine briefly the alleged threat uttered, or inducement offered, by the police officers on the flight back from Bangkok to Singapore. According to the appellant, SI Han had asked him, "What did you do seven years ago, did you kill this person?" When he denied killing the deceased, SI Han allegedly said, "You better tell your father [meaning SI Han] the truth." SI Han further added, "If you were to co-operate with us and tell us what actually went on and how it happened we will help you back during your court case." The appellant was further warned that if he did not tell the truth, "don't complain if we don't treat you like a human being". According to the appellant, this conversation was carried out by SI Han in a low voice for fear that it might be heard by other passengers in the plane. The appellant next alleged that, at that point, SI Lim came up to him and unbuttoned three buttons on his shirt, exposing his tattoos, and said "he is the one". To the appellant's mind, he felt that the officers had already come to the conclusion that he was guilty and would be hanged for the alleged crime.

13 After the plane arrived in Singapore, the appellant was brought to the 18th floor of the PCC. He said that at the PCC, SSI Zainal also told him that if he were to admit to the crime, the charge would be reduced from murder to manslaughter, and he would serve only a few years' imprisonment. Another alleged threat made against him was SI Lim's constant reminder to him that he was on the

18th storey of the PCC.

14 The trial judge examined each of the allegations of threats made, and inducement offered, by the three police officers and rejected them, giving his reasons. There were hardly any grounds for us to overturn his finding on each of the allegations. The judge was conscious that the burden of proving that the statements were voluntarily made lay on the Prosecution and that there were two components in determining voluntariness, the objective component and the subjective component. The objective component related to determining whether the threat, inducement or promise was made. The subjective component related to determining whether the threat, inducement or promise, if made, did operate on the accused's mind. Both components must be present before a statement made by the appellant should be excluded on the ground that it was not voluntarily made. Here, we need only refer to the trial judge's treatment of the appellant's assertion that SSI Zainal offered him inducement to admit to the shooting of the deceased and of SI Lim's threat to throw him down from the 18th floor (at [38] and [37]):

The [appellant] repeatedly asserted that he mistrusted all police officers. He also confirmed that he mistrusted SSI Zainal right at the outset. In light of this, I cannot see how any purported promise made by SSI Zainal could have influenced him in any material or meaningful sense. The [appellant] further admitted during cross-examination that when he supposedly agreed to the purported deal with SSI Zainal to confess in return for a reduction of the sentence, he "*never believed*" that SSI Zainal would keep his word. ...

In the course of cross-examination, the [appellant] acknowledged, albeit reluctantly, that the alleged threat to throw him off the 18th floor of the PCC building by SI [Lim] was pure speculation on his part ... I am not persuaded that there was any legitimate basis for this rather fanciful flight of imagination even if the [appellant's] version of events was correct. ...

[emphasis in original]

15 There was nothing to show that the following concluding remarks of the trial judge, as to the sort of person the appellant is, were in any respect erroneous or unwarranted (at [40]):

The [appellant] can hardly be described as a babe in the woods who might easily succumb to fear or intimidation. He is an experienced street operator used to the rough and tumble of life. As such, I do not think that he would have made the original statement so soon after he returned to Singapore, virtually at the commencement of the interview, unless he had voluntarily intended to do so. This by his own admission was not his first encounter with police officers and he did not strike me as a man who could or would be easily broken.

Since by his own word, the appellant did not trust policemen, we could not see how he could claim that he had relied upon what the police officers said to him in making the statements.

16 In this regard, we ought to allude to another contention that the appellant had raised with regard to the statement in P104, *ie*, his poor command of the English language when he made the statement. Strictly, this point related to the weight to be given to the statement rather than to its admissibility. In any event, there was nothing in the point. During the trial, the judge heard him speak in English and found, as a fact, that the appellant has the ability to effectively communicate in English. This finding was clearly corroborated by the psychiatrist from the Institute of Mental Health, Dr Steven Phang, who testified that "the accused did not speak the Queen's English, but certainly it was for want of a better description ... decent Singaporean English at least".

17 Lastly, we found no merit in the appellant's complaint that SI Lim had omitted to administer a warning to him, pursuant to s 121(2) CPC, before P104 was recorded. On this point, the trial judge said (at [42]):

First of all, it is now settled law that a statement of an accused will not be rendered inadmissible on the basis that s 121 of the CPC has not been literally adhered to: see *PP v Mazlan bin Maidun* [1993] 1 SLR 512 at 518, [23]. The Court of Appeal has also held in *Mohamed Bachu Miah v PP* [1993] 1 SLR 249 at 266, [50] that the only circumstance where a statement made by an accused "whether in police custody or not, may not be admitted in evidence is where it is tainted by inducement, threat or promise". Section 121 of the CPC does not address the issue of admissibility of statements made in the course of police investigations. The admissibility of statements to the police is broadly addressed by s 122 of the CPC. In my view, s 121(2) of the CPC does not impose a positive obligation on the police to inform suspects or accused persons that they may decline to answer a question that may incriminate them. Section 121 of the CPC purely imposes an obligation on the person being questioned to tell the truth subject to the proviso permitting him to maintain his silence on matters that may be personally incriminating. The Attorney-General, Mr Chan Sek Keong, has correctly observed in *The Criminal Process – The Singapore Model* (17 Sing L Rev 433 at 488) that:

The privilege can exist as a constitutional right without a separate duty to inform. The right to counsel exists as a constitutional right, but no one has suggested that this right is infringed if the police fails to inform an arrestee of such a right. Indeed, section 29 [Evidence Act] provides that a confession if relevant does not become irrelevant merely because he has not been warned that he was not bound to make such an answer.

I should perhaps add, for completeness, that the bundle of legal rights relating to the questioning of suspects enunciated in *Miranda v Arizona* 384 US 436 (1966), that defence counsel was inarticulately relying on, is not part of our legal jurisprudence; see also *Rajeevan Edakalavan v PP* [1988] 1 SLR 815 at [16]. That said, it would of course be quite improper for a police officer to inform a person being questioned that he is obliged to tell the truth without concurrently informing him of the effect and purport of the proviso. If a police officer misleads a suspect or an accused as to his legal obligations, and this has a material bearing on the making of a statement, the court has an overriding discretion in determining the admissibility of such a statement: see *Cheng Swee Tiang v PP* [1964] MLJ 291 and *PP v Dahalan bin Ladaewa* [1966] 1 SLR 783. ...

18 We agree with the trial judge's summary of the present state of the law but would make the following comments as a matter of clarification. Judicial attitudes towards the legal effect of the words "you had better tell the truth" or any equivalent expression have shifted over the years. While such utterances have previously been treated as necessarily establishing a threat or an inducement, the current view is that the import of such words should be assessed in the context of the individual case: see *Lim Kim Tjok v PP* [1978–1979] SLR 306 and contrast *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25 ("*Chai Chien Wei Kelvin*"). This must be correct. The effect of such words if uttered must, in the final analysis, be assessed according to the part objective and part subjective test propounded in *Chai Chien Wei Kelvin* and *Gulam bin Notan Mohd Shariff Jamalddin and Another v PP* [1999] 2 SLR 181. The present case, where the appellant said that he did not trust the police (see [15] above), illustrated the application of the part objective and part subjective test.

Evidence for the Prosecution

19 We will now set out the relevant parts of the statements made by the appellant which formed the evidence tendered for the Prosecution:

P104 (recorded on 30 September 2004)

1 I am the one who do it. I am the one who shot him (referring to the deceased) with a 0.38 revolver.

2 ... At that time, I was having money problem and I borrowed S\$8000/- to open a shop to sell clothing at City Plaza, #03-07. I had to pay him back S\$9600/- including interest. As we were friends, I only paid him in installments when I have the money.

...

4 I saw my wife crying and asked her what happened. My wife told me about [the deceased's] call and after hearing that [the deceased] scolded my wife in bad word, I got angry.

5 I cannot remember when I bought the revolver, but I bought it from Thailand for 15000 baht. I put the revolver in a raw sticky rice bag and brought it through the checkpoint in Singapore by bus. ...

6 So after hearing that he used 'four languages' on my wife, I decided to use the gun on him. I reached Blk 4 Beach Road earlier than 8.30pm and I placed the gun on the grass near to a tree to hide it. ...

7 Ah Seng only came at about 9pm. The moment he arrived, we quarreled and he scolded my parents. I then gave him S\$2300/- but he still not satisfied and scolded my parents. I get angry because he scolded my parents. I then tell him to wait for me there and I will go get more money in 5 minutes time.

8 I walked to where I hide the gun and took it. It was very near Ah Seng. I just took the gun in my right hand and walked towards Ah Seng. His back was facing me. I did not care so much whether people see or not because I am angry already. When I was right behind him, I pointed the gun at the back of his head and fired one shot. Immediately, he fell forward on the cement pavement and I saw that he was not moving. It was very dark there. I then tucked the gun in between my pants and stomach and walked to my bicycle which was parked at the same place. I cycled just to the main road and from there, I abandoned my bicycle and took a taxi to Waterloo street. ...

P106 (recorded on 6 October 2004)

...

4 On the day of the incident, at about 7-8 pm, I left Geylang area after having dinner. ...

5 On arrival at Blk 4 Beach Road, I parked my bicycle beside the bin centre nearby. Next, I took out my gun from the storage box of my bicycle and kept it in the bushes near the entrance of the driveway. ...

6 Having hidden the revolver, I telephoned the deceased from the public telephone at Blk 4 Beach Road. ... I informed him that I had money to pay him ...

7 He arrived at 9.00 pm or 9.05 pm. ... Even before I could take out the money to repay or talk to him, the deceased grabbed my shirt front and pushed me. He demanded money. I

immediately took out \$2,300/- from jeans pocket and gave it to him. While handing the money to him, I pleaded with him not to keep harassing me. I said that I would make further payment the moment I had the money. However, he disregarded what I said and started abusing me in vulgar language. He also abused my parents. ... I told him to wait a short time while I went to get another \$1,000/- for him. He hurried me to do so, saying "Your damned father (referring to himself) is waiting for you". I turned around furiously and walked towards Blk 3 Beach Road. ... At the main entrance of the driveway, I turned left into the driveway by walking alongside the inner fencing to pick up the revolver that I had hidden earlier. At this juncture, I decided to teach him a lesson and I wanted to get hold of the revolver. I wanted to shoot him just to scare him. I did not want to kill. After all, he was a friend of mine.

[8] The spot where I had hidden the revolver was on an elevated position of the grass verge. The deceased seemed to be looking at something ahead of him and his back was facing me. I bent down to pick up the loaded revolver from the bushes. With the revolver in my right hand, I stood up and turned towards the direction of the deceased. I immediately fired a shot at the direction of the back of the deceased. I fired the shot without taking aim. ...

20 Besides these statements, there was the evidence of PW21. According to this witness, on 9 or 10 March 1997, he met the appellant at the car park of the Immigration & Checkpoints Authority building to seek repayment of a loan which the appellant had taken from him. At the meeting, the appellant told PW21 that he owed a few thousand dollars to the deceased. The appellant had also expressed his anger over the deceased's conduct towards him and described how he felt when the deceased had treated him like "a nobody". The appellant claimed that the deceased had unreasonably and persistently harassed him to repay the debt. PW21 said that the appellant also showed him what appeared to be the butt of a gun tucked at the right side of the appellant's waist. The appellant told PW21 that he wanted to end the deceased's life within a week or ten days. We should add that at this meeting, PW21, fearing for his own safety, told the appellant to forget about the loan which the latter owed him. Later, PW21 told another person, Raymond Chew, what the appellant had said and shown to him.

21 Following the shooting of the deceased, the appellant tried unsuccessfully to contact PW21 to get some money to enable him to leave Singapore. About a week after the crime, PW21 received a call from the appellant who said that he was by then already in Thailand.

22 Next, there was the evidence of Tham who said that he met the appellant in the afternoon of the day of the crime. The appellant told Tham that he owed the deceased a lot of money and the latter had persistently harassed him for repayment. The appellant also told Tham that he intend to rob the deceased of his jewellery and added "I have something". The appellant then tried to show Tham that "something" that he had hidden at the right side of his waist by lifting his shirt. However, Tham did not see what it was.

The appellant's evidence

23 The appellant admitted that he bought a gun in Bangkok which he then smuggled into Singapore. He also admitted that on the fateful day, he met up with the deceased to return the sum of \$2,300 to the latter in relation to a loan which he took from the deceased to open a garment shop at City Plaza, or Geylang. Instead, the deceased became angry and abused him with vulgarities. In view of the deceased's violent reactions, the appellant told him to wait while he went to get another \$1,000 from his bicycle. Before the appellant could move off, an unknown person came from behind the deceased and shot the deceased at the back of his head. The unknown person was rather big in build, wore a dark-coloured shirt and a Thai straw hat. The gunman, having shot the deceased, then

fled from the scene. The appellant averred that he was too shocked to scream and fled too as a result.

24 The appellant also claimed that he lost the gun which he had brought in from Thailand two to three days before the deceased was shot. What he had in his possession that fateful day was just a plastic "gun".

Inconsistencies in the statements

25 We now turn to the point about the numerous inconsistencies in the statements of the appellant upon which he sought to rely to show that the statements were unreliable and that it would be unsafe for the court to act on them. The appellant referred to the fact that in his younger days he had had a bad experience with the police. Thus, he had deliberately created the inconsistencies in the statements with two objectives in mind. One was to satisfy the police officers' demand for a statement. The other was to show that everything he said in the statements was not reliable, the inconsistencies being his "silent cry for help". In short, he had deliberately planted the inconsistencies. The appellant emphasised the fact that if he had the intention to kill the deceased, he would not have bothered, in the first place, to return the sum of \$2,300 to the deceased.

26 On this, the Prosecution submitted that the inconsistencies in the statements had more to do with difficulties in recalling matters of detail that had happened more than seven years ago than the appellant deliberately setting out inconsistencies to create confusion and to render the statements useless.

27 Counsel for the appellant referred to para 8 of P104 and paras 7 and 7(a) of P106, to illustrate what he submitted was a serious question of discrepancy:

P104

8 I walked to where I hide the gun and took it [*ie* "on the grass near to a tree"]. It was very near to Ah Seng. I just took the gun in my right hand and walked towards Ah Seng. His back was facing me. ... When I was right behind him, I pointed the gun at the back of his head and fired one shot. ...

P106

7 I walked along the foot of the block till the end of it and I looped back via the pavement alongside the main road ... At the main entrance of the driveway, I turned left into the driveway by walking alongside the inner fencing to pick up the revolver that I had hidden earlier [*ie* in the bushes near the entrance of the driveway]. ...

[8] The spot where I had hidden the revolver was on an elevated position of the grass verge. The deceased seemed to be looking at something ahead of him and his back was facing me. I bent down to pick up the loaded revolver from the bushes. With the revolver in my right hand, I stood up and turned towards the direction of the deceased. I immediately fired a shot at the direction of the back of the deceased. ...

28 We noted that the alleged discrepancies related to three aspects. The first was as to the location where the gun was hidden. The second was as to the manner in which the deceased was shot. The third was as to the way in which the deceased fell after he was shot. In our opinion, these differences were really matters of detail, brought about perhaps by difficulties in recollection. After

all, there was a time lapse of more than seven years. However, more important to note was that there was no inconsistency in the statements that he brought the gun to meet the deceased on that fateful day, that the deceased hurled abuses at him making him very angry, that he went to a nearby place to pick up the gun which he had earlier hidden and used it to shoot the deceased from the back. These essential facts were set out in the statements and were not contradicted.

Evidence of PW21 and Tham

29 We turn next to the appellant's arguments that the trial judge should not have accepted the evidence of PW21 and Tham, as their testimonies were riddled with inconsistencies on material aspects. It was not in dispute that soon after the commission of the crime, the investigating officer had taken statements from both of them. The conditioned statements which both of them signed in March 2005 were based on their police statements which were recorded soon after the crime.

30 Counsel for the appellant submitted that the evidence of Tham was not of any value as he did not see what was tucked under the shirt of the appellant. It could be a knife or any other instrument. Nothing that Tham had said indicated that the appellant was carrying a gun. All that the appellant had told Tham was that the appellant intended to rob the deceased. As regards the evidence of PW21, counsel submitted that the witness was unable to say whether the butt that he saw was that of a real gun or a fake. Moreover, there was nothing in what the appellant had said which suggested that the threat uttered was serious and not just to frighten PW21 and/or the deceased, as the appellant owed money to both PW21 and the deceased. The appellant had to act tough so that both the deceased and PW21 would not put so much pressure on him with regard to the outstanding loans. The appellant's actions were thus described as merely a tactic employed to scare and intimidate his creditors. This was purportedly substantiated by the fact that PW21 said that he was frightened by the appellant's utterances.

31 Counsel also pointed out that Tham's evidence that the appellant intended to rob the deceased was wholly inconsistent with the fact that the appellant had returned a sum of \$2,300 to the deceased that day. Neither did the appellant remove the deceased's belongings on his body after having shot the deceased. In any event, even if it were true that the appellant had told Tham that he wanted to rob the deceased, robbing and shooting the deceased were two entirely different acts.

32 As regards the evidence of PW21, the appellant submitted that PW21 was not a reliable person as he denied that he was, like the deceased, also an illegal moneylender. PW21 even said that when he lent \$7,000 (interest-free) to the appellant, he was already prepared that he was never going to get his money back. Counsel highlighted the fact that PW21's provision shop only earned \$10,000 a month and it defied reason for PW21 to give away \$7,000 just like that.

33 It seemed to us that the appellant was only, in these arguments, picking faults on totally immaterial aspects. We did not think it would be productive to examine each of these alleged inconsistencies. Suffice it for us to say that in the assessment of the trial judge, both PW21 and Tham were (at [46]) "forthright witnesses who were unshaken in cross-examination on all *material* issues" [emphasis added]. The material evidence of PW21 was that the appellant intended to end the life of the deceased and, to substantiate that intention, he showed to PW21 the butt of a gun. The material evidence of Tham was that the appellant intended to harm the deceased. The evidence of these two witnesses, particularly that of PW21, established the requisite *mens rea* for an offence under s 4 of the AOA.

Unknown gunman

34 The first time that the appellant raised the issue of an unidentified gunman, who, in fact, shot the deceased, was on 28 October 2004 when the psychiatrist, Dr Stephen Phang, interviewed him to assess his psychiatric condition. Dr Phang found the appellant to be relevant and rational in his speech and thought. He told Dr Phang that the deceased was his financial supporter who would lend him money without charging interest except for \$10 to \$20 as "coffee money" and there was no reason why he would want to dispose of the deceased.

35 The appellant, in particular, pointed out that the deceased was known to be a big bully in the Golden Mile area of Beach Road, often beating people up. So he would have already made many enemies. It should come as no surprise that there were people out there who wished to settle scores with him.

36 As would be apparent, the main problem with this assertion of the appellant is his failure to mention the unknown gunman in any of his earlier statements to the police. In fact, the appellant had stated in his earlier statements that he was the one who shot the deceased. Neither did he mention about the loss of the gun and that what he had in his possession was not a real gun. We have in [17] above set out the relevant passages from his statement. More significantly, he also did not say anything about the mystery gunman in his cautioned statement (P103).

37 Even in his last statement (P108), the appellant had merely said it was never his intention to kill the deceased as he only wanted to teach the latter a lesson. It completely defies logic why the appellant did not allude to this unknown gunman earlier. Nothing can adequately explain this omission; certainly not oversight.

38 The trial judge could not accept the defence of a mystery gunman who came from nowhere and shot the deceased. The judge found this story to have been concocted by the deceased as an afterthought. In [55], the judge addressed the various reasons why this defence was wholly unmeritorious. As the judge aptly noted, there was no reason for the appellant to flee the scene if someone else had shot the deceased. This was especially so when, according to the appellant, the deceased was his "best friend and financial supporter". His excuse of "avoiding trouble" to justify his not assisting the deceased after the latter was shot seemed to us rather lame. We shared the judge's views that the mystery gunman was just a fabrication. While it might well be true that the deceased could have had many enemies, it did not follow that one of them would have had a gun and the will to shoot the deceased. Speculation does not constitute evidence.

Absence of gun and cartridges

39 The final point raised was that the trial judge did not give adequate consideration to the fact that the Prosecution was not able to produce at the trial either the gun or any bullet or cartridge relating to the shooting that caused the death of the deceased. It was after much harassment from the police officers that the appellant pointed out, from the drawings of the various types of firearms placed before him by the police, the one that he owned and used to shoot the deceased.

40 Like the trial judge, in the circumstances of this case, we did not think the fact that no gun, bullet or cartridge was recovered was crucial in establishing a case against the appellant. It was not in dispute that the deceased was shot in the head by a gun and that he died on account of that injury. The only question which the court had to decide was who did it: Was it the appellant or the mystery gunman? Here, the judge rejected the defence of a mystery gunman and held that the mystery gunman did not exist, it being just a figment of the appellant's imagination created to save his own skin.

41 It must be borne in mind that in court the appellant admitted to buying a gun in Thailand and smuggling it over to Singapore. Up to two to three days before the incident, he was constantly carrying the gun with him. There was the evidence of PW21 that the appellant wanted to end the life of the deceased and had shown PW21 the butt of a gun. There was also the evidence of Tham, that indicated that the appellant had wanted to harm the deceased. Moreover, there were clear statements from the appellant that he had shot the deceased; although in his last statement (P108) he claimed that he never intended to kill the deceased, but had only wanted to frighten him. It seemed to us all too convenient for the appellant to claim that he had lost the gun two to three days before the incident. Moreover, this claim was contradicted by the evidence of PW21 who said the appellant showed him the butt of a gun. Viewed in its totality, the evidence against the appellant, that he had discharged a firearm with the intent to injure the deceased, was overwhelming.

Principles of law

42 In any event, the issues raised by the appellant all related to facts which the trial judge had found after hearing oral evidence and assessing the credibility and veracity of witnesses. The circumstances under which an appellate court can disturb such a finding of fact of the trial judge are limited, namely, where the finding is clearly against the weight of the evidence. This principle has been well established: see, eg, *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32] and *Shaiful Edham bin Adam v PP* [1999] 2 SLR 57 at [70]. The statement of Lord Shaw of Dunfermline in *Clarke v Edinburgh and District Tramways Company, Limited* 1919 SC (HL) 35 at 36–37 encapsulated the rationale behind this principle:

In Courts of justice in the ordinary case things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. ... Am I – who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the Judge who heard and tried the case – in a position, not having those privileges, to come to a clear conclusion that the Judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the Judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.

This statement is as valid now as it was then.

43 It is also settled law that an accused can be convicted solely on his confession even though that statement is subsequently retracted. But before convicting a person on this basis, the court must be satisfied that his confession is voluntary, true and reliable: see *Osman v PP* [1965–1968] SLR 128 and *Ismail bin UK Abdul Rahman v PP* [1972–1974] SLR 232. Counsel for the appellant, however, submitted that where there were inconsistencies in the statements made, the court should not convict unless there was strong corroborative evidence. Counsel in particular placed reliance on the decision of the court in *Taw Cheng Kong v PP* [1998] 1 SLR 943 where the accused there, over a period of 17 days and five statements, changed his story several times, and Karthigesu JA said at [110]:

... I am of the view that even if the statements were rightly admitted, they must, in the light of these difficulties, be given very little weight, and it would be wrong for a conviction to rest on any fact admitted to by the appellant in those statements in the absence of strong corroborative evidence.

44 But here the main story in the five statements made by the appellant never changed and

that was, that the appellant shot the deceased from the back with the gun which he smuggled into Singapore from Thailand. As we have alluded to earlier, the discrepancies in the statements related to details, obviously caused by difficulties in recalling them due to the long lapse of time. The discrepancies had nothing to do with the elements necessary to establish the charge of discharging a firearm with intent to cause physical injury. It is settled law that if the court is satisfied that a retracted statement is true and reliable as to the material respects, no other corroborative evidence is required: *Mohamed Bachu Miah v PP* [1993] 1 SLR 249 and *PP v Rozman bin Jusoh* [1995] 3 SLR 317. In any event, if corroboration were required, that could be found in the evidence of PW21.

45 Finally, we should say that while the statements were obtained from the appellant in connection with a charge of murder under s 300 of the PC, we knew of no principle of law which restricted the statements being used in relation to an alternative charge which the Public Prosecutor thought fit to frame based on the same incident.

46 In the result, the points raised by the appellant to upset the determinations of the trial judge were wholly without merit.

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