

Public Prosecutor v Khwan-On Nathaphon
[2001] SGHC 313

Case Number : CC 4/2001
Decision Date : 15 October 2001
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Kan Shuk Weng and Christina Koh (Deputy Public Prosecutors) for the prosecution; N K Rajah (Rajah Velu & Co) and S Balamurgan (Tan Lee & Partners) (AC) (both assigned) for the accused
Parties : Public Prosecutor — Khwan-On Nathaphon

Judgment

GROUND OF DECISION

1 Khwan-On Nathaphon, a Thai National born on 28 August 1974, employed in Singapore under a work permit as a construction carpenter was charged and tried before me for an offence of murder. The charge against him was that on 15 June 2000 between 12.48am and 6.00am, he committed murder by causing the death of a 65-year-old part-time taxi driver, one Ong Huay Dee in an NTUC Comfort taxi-cab bearing registration No. SH7436M ('the said taxi') which was found to be parked at the end of Pasir Ris, Drive 1, Singapore.

2 The prosecution's evidence was that on 15 June 2000 at about 6.00am, the police were alerted by one Ng Thiam Hock who had earlier come across a man lying motionless and still inside the said taxi at one end of Pasir Ris Drive 1.

3 When the first police officers arrived at the scene at about 6.14am, they observed Ong Huay Dee slumped on the front passenger seat. The headlights, hazard lights and the engine of the taxi were still on. The paramedic who arrived shortly thereafter pronounced Ong Huay Dee dead.

4 At about 8.20am, the investigating officer S/Sgt Raymond Tan arrived at the scene and commenced investigations. At about 9.15am, the forensic pathologist Dr Teo Eng Swee ('Dr Teo') arrived and noted blood sprays and blood drips inside the taxi.

5 Dr Teo conducted a post-mortem. He found that there were in the main five external injuries on the deceased: three lacerations and one bruise on the head and one semi lunar-shaped laceration on the left thumb.

6 According to Dr Teo, the cause of death was 'intracranial haemorrhage and cerebral contusions with fractured skull'. In his opinion there were at least four blows to the deceased's head, hence the lacerations, bruise and the fractures to the deceased's skull and injury to his brain.

7 Dr Teo stated that:

(1) Laceration 1 (which was 5.2cm long and found over the left back part of the head, just left on the mid pine) was consistent with being caused by the narrower surface of the flat handle of a hook hammer (a specimen thereof was produced in court); great and severe force was applied to the head to cause laceration 1.

(2) Laceration 2 (found over the left back part of the head near the mastoid region) was consistent with being caused by the hooked part or flat edge of the hook hammer. Although the hooked part measured 1.2cm long, it was possible for the injury (Laceration 2) to be only 1.2cm. Dr Teo said that moderate force was applied to cause Laceration 2.

(3) Laceration 3 (found over the left back part of the head near the midline) was consistent with being caused by the hooked part or flat edge of the hook hammer; moderate force was used to inflict Laceration 3.

(4) A bruise (found at the lower right back part of the head) was consistent with being caused by the broader surface of the flat handle of the hook hammer. The reasons why the skin did not tear may be:

(i) The force was dissipated over a larger area and;

(ii) There was protection offered by the layer of hair on the sides and back of the deceased's head. Dr Teo was rather tentative as to the degree of force used to cause this bruise. Having said that great force was used at one stage, he later modified to one of moderate force.

8 Dr Teo's testimonial assertion was to the effect that the laceration (item 1) and the bruise inflicted on the head of the deceased were probably the fatal ones. Dr Teo stated that the blows to the deceased's head resulted in injury to the deceased's brain which was the cause of the death of the victim.

9 Dr Teo added that the laceration found on the left thumb of the victim was perhaps due to the deceased placing his hand to the back of his head after the first blow to his head but the next blow caught his thumb and hence the laceration. Dr Teo said that the victim would most likely have died within minutes of the blows to his head. Dr Teo further testified that the two injuries ie, the laceration (item 1) and bruising (item 4) which were inflicted on the victim's head were sufficient in the ordinary course of nature to cause the death of the victim.

10 Dr Teo added that the injuries sustained by the deceased were probably caused by a blunt weapon. Although he had suggested in his report that a hook hammer was the likely weapon, he did not rule out a steel pipe with jagged or sharp edges or even a spanner as being the weapon used. He added that the assailant was probably behind the victim at the time the injuries were inflicted. He did not see any sign of struggle in the taxi.

11 The other evidence tendered by the prosecution through Dr Teo was that when he first arrived at the scene to examine the deceased, he found that although the deceased had a handphone clip on his belt, no handphone was found either attached to it or nearby.

12 The accused was arrested at about 4.15am on 16 June 2000 at the workers quarters of one Lean Hin Lee Construction site located at Pasir Ris Coast Industrial Park 3, off Lorong Halus, Singapore. Of the many items seized at the scene of the arrest was a black *Ericsson T18* mobile phone. It was not in dispute that this phone belonged to the deceased.

13 The next segment of the evidence revolved around a number of statements recorded from the accused by the police. All the statements were admitted in evidence after the court was informed by

the prosecution as well as by defence counsel that the said statements were made voluntarily without any element of threat, inducement or promise from anyone in authority either during or before the recording of those statements. In those statements the accused had clearly admitted that he was the person who had caused the injuries to the deceased at the material time.

14 Amongst the statements admitted, there were three investigation statements: (a) a statement (exh P-131) recorded by Insp Bahar Bakar on 15 June 2000 (pages 241 to 246 of the preliminary inquiry notes); (b) a further statement (exh P-132) also recorded by Insp Bahar Bakar on 20 June 2000 (pages 247 to 251 of the preliminary inquiry notes); and (c) and another statement (exh P-154) recorded by the investigating officer S/Sgt Raymond Tan on 24 June 2000.

15 Insofar as material, the following portions of the statements require reproduction:

(a) Exhibit P-131 - statement recorded on 15 June 2000:

On 14 Jun 2000 at about 11.30 pm, I was with a male friend known to me as Wanchai Meeying and we were then walking together at the park near to Golden Mile Complex. At the park, we passed by a group of 6 to 7 male Thai who were drinking and they greeted us in Thai. Both Wanchai or myself did not respond to their greetings and they accused us being arrogant. One of them even threw a slipper at Wanchai and it hit him at the back of his body. Wanchai became angry and we approached the group for what they have done. I asked them why they have done that. I told them that we were after all Thais and we could talk thing over. One of the male Thai from the group confronted Wanchai and fisted him on his face. Wanchai retaliated and punched back. I tried to separate them by pulling Wanchai away. At the same time, two to three of them from the group were also pulling the other party from Wanchai. During the tussle, I also saw three others in the group were armed with objects, either wooden or metal poles. Upon seeing that they were armed, Wanchai and I ran away from park and Golden Mile Complex. At that time, Wanchai's was bleeding from his nose and his shirt was stained with his blood. I noticed 3 Thais from the group chased us. While running away, we took wooden branches from the ground and confronted the three male Thai. One of them threw a wooden pole at Wanchai but it missed. Wanchai then rushed towards them with the wooden branch and used it to attack them. I stood behind Wanchai. There were struggles between Wanchai and the three of them. I also joined Wanchai and used the wooden branch to hit them too. Wanchai and I managed to subdue them to the ground. While doing so, I noticed 3 to 4 other male Thais who were in the same group earlier came towards us. Upon seeing them, I pulled Wanchai away and at this juncture, I noticed a metal object fell on the ground and it was wrapped in newspapers from one of them whom we had subdued. I knew it was a metal object as when it fell to the ground, it produced a metal sound. I picked the metal object, which was about a foot long with my left hand while my right hand was still holding the wooden branch. I then threw the wooden branch towards the group who was approaching us. Wanchai and I ran away towards the main road heading back a bus stop opposite Golden Mile Complex. I was still holding the metal object with my right hand. We chose to run back to Golden Mile Complex as the place would be crowded and the group of male Thai would not chased after us further. When we reached the bus stop, I looked back and I could not see the group of male Thai who were chasing us earlier. At the bus top, I concealed the metal object by tucking it at my right waist and covered it with my grey longsleeve jacket,

which I was wearing. I also wore an inner short sleeve blue shirt. My jacket was stained with Wanchai's blood. Wanchai cleaned his bleeding nose by wiping it with his T-shirt.

2 At the bus stop, Wenchai and I decided to go on our separate ways. We agreed to meet again on the next day at 10.00 am on the second floor of Golden Mile Complex. Wanchai boarded a bus and I did not pay notice the service number. After he had left, I walked to the nearby overhead bridge and waited for a taxi. It was about midnight when I managed to hail a taxi after waiting for about 5 minutes. It was a blue Comfort taxi and I boarded the taxi from left rear passenger door. After closing the door, I shifted to the extreme right and sat directly behind the taxi driver. I told the driver to send me to Pasir Ris by saying "Pasir Ris Dr 12", bus stop" as I wanted to go back to my working quarters at Pasir Ris. The driver moved off and he talked to me in Chinese. I did not understand what he was trying to say. I guessed that the driver did not know the way. I then told the driver "Okay, I told you" and at the same time, I showed some hand gestures showing the direction. I then told him "You go highway and you down Kaki Bukit". At that time, I did not used hand gestures and the driver replied "Okay, Okay". Along the journey, I noticed the driver was passing by Geylang area, which link to an expressway.

3 After a while, the driver turned into the left exit from the expressway and arrived at Kaki Bukit. When he arrived at a junction, the driver asked by saying "where" which I understand that he had asked for the direction. I told him to turn right by saying "right". I also used my right hand gesture to turn right. From there, I continued to guide the taxi driver on the route to be taken. At that time, I have moved to the centre of the back seat. I am quite familiar with the road at that estate because I frequent the route on my way to Pasir Ris from Golden Mile Complex previously.

4 While I was seated at the centre seat, I noticed the driver saw my bloodstain jacket and he looked at me through the rear view mirror. He also turned his head to look at me a few times. I felt uneasy and I became worried about the bloodstain on my jacket. The driver asked me "you fighting" a few times. I replied "No" a few times. He then asked more but I did not understand him. I guessed he wanted to know why my jacket was stained with blood. I asked him to continue driving by saying "you go, you go". The driver then grumbled on something, which I presumed that he wanted to know about the bloodstain. I just kept quite. At that juncture, I observed that the driver kept on looking at me through the rear view mirror. I became more uneasy when I saw him talking his handphone from the dashboard. However, he did not make a call and placed it back on the dashboard. The driver did the same a few times. I also saw his black wallet placed beside his handphone. I then moved back to the extreme right and sat directly behind the driver.

5 When the taxi was approaching Lorong Halus, I saw the taxi driver reached out for his handphone with his left hand and about to make phone call. I then made a sound "Ah Hem". I did that because I have the impression that the taxi driver wanted to call the Police. After making the noise, I saw the driver placed back his handphone on his dashboard.

6 When the taxi arrived at a junction after passing through the junction of Lorong Halus, I told the driver to turn left by saying "you go left". The driver made the left turn. Thereafter, the driver turned his head to the left and asked me "where". At that juncture, I saw a vehicle parked along the road and I told the driver "Okay, you stopped same same car". The parked vehicle appeared like a pick-up.

7 The taxi driver stopped the taxi near the carpark. I told him "Okay, I down". I saw the taxi driver used his left hand to press on the meter fares and at the same time, used his right hand to take his handphone from the dashboard. When I saw him doing that, I removed the metal object which was tucked on my waist and hit the taxi driver at the back of his head about 2 to 3 times. After the hit, the taxi driver fainted to his left side and his right hand was still holding the handphone. I hit the taxi driver because I have the impression that the taxi driver would call for the Police. When the driver had fainted, I took the handphone from his grip and the wallet from the dashboard. Before I alighted, I saw a vehicle entering into the carpark. Thereafter, I opened the left rear passenger door and alighted. I ran towards the main road. Upon reaching the main road, I crossed the road and stopped at the second bus stop. Nobody was around then and although, I was not having a watch, I estimated that it was about 1 am. At the bus stop, I saw the metal object, which I had used to hit the taxi driver, was stained with blood. Earlier I did not pay notice whether the taxi driver had bloodstains on him.

8 At the bus stop, I threw the metal object into the rubbish bin. I removed my jacket and also threw it in the rubbish bin. I switched off the handphone. Thereafter, I opened the wallet to check. I noticed the taxi driver's pass in the wallet. I took it out and looked at it. From the pass, I came to know that the deceased was more than 60 years of age. While inside the taxi, I have the impression that the taxi driver was about 50 years of age. I also saw about sixty dollars cash inside the wallet. I took the cash and threw the wallet into the rubbish bin. Thereafter, I walked through a short cut back to my quarters and it took me about 15 minutes to reach my working quarters.

(b) Exhibit P-154 – statement recorded on 24 June 2000:

20 I want to say that when I returned to my room after I had assaulted the taxi driver, I placed my navy blue canvas shoes under my bed. I did not know whether the said canvas shoes were stained with blood. There was "Star" logo on my navy blue canvas shoe. The recorder showed me a photograph of a pair navy blue canvas show. I affirmed the said pair of canvas shoe belonged to me. I recognise the bottom of the left side of the shoe was partly peeled off. The size of the shoes is 41. I also have another pair of the similar shoes which the size was 42.

21 On my way back to my quarters, I stopped at the same Chinese alter located next to the site office. I then took 9 joss sticks from the alter table and lighted them. I took out the taxi driver's pass and looked at his photographs. As I looked at the taxi driver's photographs, I could feel that the taxi driver looked alike my father. I wanted to have a good look at the taxi driver's photograph, I peel opened the taxi pass at it central and the pass was remained one piece. The

name of the taxi driver was Ong Huay Dee as it was stated on the pass. I then swore to the god that I would not run away from the police for what I had done to the taxi driver. I then recalled what when I was young, my father told me that I should face the consequences that I had wrongly committed.

...

25 When I was at the CID office, I was questioned about the death of the taxi driver. I denied to the incident as I wanted to delay the time so that Wanchai could leave Singapore safely. It was after I was charged in Court and the police officers led me back to my quarters, I then confessed to the crime. This is because I saw a banner written with Thai characters at the work site stated that Wanchai had left Singapore for Hatyai. Since, I knew that Wanchai had left Singapore, I decided to confess to the offence.

26 I want to clarify that on 15 Jun 2000, when I was at Montree's work site at Kaki Bukit I did not wait for Montree at the forest for 2 to 3 hours. After I was chased by Montree's supervisor, I went to Lor 30 Geylang to look for my girlfriend, Tan (referring to Phensuwam Netnapha) at her home.

27 From Kaki Bukit, I took a public bus to E6 MRT station (referring to Eunoz). Thereafter, I took a MRT train to E4 MRT station (referring to Aljunied). I then walked to Lor 30 Geylang. It was about 9.00 pm, I arrived at Lor 30 Geylang and I called Tan at her home using a public phone card. I asked her that I was outside her house and asked her to come out to meet me. I did not go to her house because I did not want her family members to see me. Shortly after, Tan came to meet me with her two or three years old sister.

28 When I met her, we walked together along the roadside. We then sat outside a house. I then told her that I had a problem and might be arrested by the police. She did not ask me why I would be arrested but instead she cried. I told her that if anyone would to ask her about my whereabouts last night, she should tell them that I was with her at the park near Golden Mile Complex the whole night till 6.00 am the next morning (15 Jun 2000). I did not mention anything about taxi to her. We then hugged together. I asked her to lie so that If I would be arrested, I would be able to use her as an alibi. I then told her I would call her again tomorrow and I left. (note: accused was asked who the "anyone" he was referring to, he replied that he did not know who at the time when she told his girlfriend).

16 The next segment of the prosecution's evidence centred on the mental condition and the general disposition of the accused. This evidence was introduced in anticipation of a possible defence of diminished responsibility. In this regard, Dr Tommy Tan ('Dr Tan') presently a consultant with the Woodbridge Hospital and previously a psychiatrist attached to the Changi Prison Hospital, testified that he examined the accused on 19 July, 26 July and 2 August 2000 and in his opinion the 'accused was not of unsound mind at the time of the alleged offence and that there was no mental illness before and during the [commission of] the alleged offence [as] would impair his mental responsibility at the material time (page 699, lines 7 to 12 of the NE).

17 A report prepared by Dr Tan dated 4 August 2000 (exh P-121) insofar as is material reads as follows:

The above named has been remanded in Changi Prison Hospital on the 17/7/00 for psychiatric assessment. He has been charged with the murder of Ong Huay Dee.

I have examined the above named on the following dates: 19/7/00, 26/7/00 and 2/8/00. Ms Orawan Triteeyaprasert was the Thai interpreter when I examined him on these dates. I have spoken to Mr Poh Kien Fat, who is the accused's supervisor where the accused worked. I have also read the observation notes made by the staff nurses in Changi Prison Hospital.

The accused said that he was sad and had difficulty sleeping after the death of his wife. His wife died after an accident in early 1999. However he was able to function normally. Mr Poh, the supervisor did not observe any abnormal behaviour. The accused worked like other Thai workers under his supervision. He interacted with the other workers. The accused did not work after receiving his salary. The accused said that he was trying to find a job for a friend who is coming to Singapore. He did however return to the quarters to sleep. The accused also has a girlfriend in Singapore, with whom he had sex many times. She visited him while he was in custody at the Criminal Investigation Department. He also gave a clear account of the events of the evening before and after the alleged offence and the alleged offence itself. It is therefore unlikely that he has a mental illness before and at the time of the alleged offence, which would impaired his mental responsibility for the alleged offence.

According to the Senior Investigation Officer, SSGT Raymond Tan, the accused attempted to harm himself during his custody at the Criminal Investigation Department. He attempted to knock his head against the wall. When he was moved to a padded cell, he climb the door and removing the wire casing and he threatened to hang himself with wires. He did not sustain any injuries. He later told the Thai interpreter, Mr Adisak that he was worried about his case and that he would be sentenced to death.

During my examinations of him, he said that he felt like a "condemned prisoner". During the first examination, he said that he would commit suicide if he has a chance to do so. He said that he has difficulty sleeping. He was started on an antidepressant, Prothiaden 50 mg at night. On the subsequent examinations, he said that he felt better with the medication because it relieved his stress and he could sleep better. However he would not tell me that whether he would still attempt suicide. In my opinion, he has a Depressive Episode (ICD 10 F32.0), following his arrest and imprisonment. It is reactive to his current circumstances. He is fit to plead. He is fully aware of the charge against him and the consequence of pleading guilty. He is rational and lucid and will be able to instruct his counsel and follow proceedings in court.

In summary,

1. The accused was not of unsound mind at the time of alleged offence.
2. There was no mental illness before and during the alleged offence that would impair his mental responsibility at the

material time.

3. He has a depressive episode following his arrest and imprisonment. His depressive symptoms have improved with medication.

4. He is fit to plead.

18 In his oral testimony too, Dr Tan having listened to the testimonies of the accused's girlfriend, Phensuwan Netnapha, his fellow workers, his supervisors and after considering a report submitted by the defence psychiatrist, Dr Douglas Kong, maintained that the accused did not suffer from any form of mental or any major depressive illness before his arrest. He added however, that the accused appeared to have developed a mild depressive episode after his arrest.

19 Dr Tan confirmed that the accused had told him during his clinical examinations that his mother had a mental problem and had received treatment in Thailand. The accused had also told Dr Tan that his third brother who was older to him by two years also had some mental problem (page 732 of the NE).

20 Prior to the testimony of Dr Tan, the prosecution also proffered evidence through the accused's supervisors and fellow workers and the girlfriend of the accused which was to the effect that they did not, during their interaction with the accused, notice or observe any abnormal behaviour on his part. It must, however, be noted that the girlfriend of the accused mentioned in her testimony that although the accused was generally normal (see page 626, line 17 of the NE), on occasions he was found to be very vulnerable, temperamental, quiet and less talkative (page 628, line 5 of the NE); and sometimes pretended to be happy (see page 630 of the NE).

21 A fellow Thai worker Samran Sathiankit told the court that on one occasion the accused, after a drinking session, became annoyed with Samran when the latter questioned him about some missing monies and used a cooking knife to injure Samran's dog (page 521 of the NE).

22 Another matter of relevance brought to light by S/Sgt Raymond Tan during the prosecution case was that the accused, whilst in police custody attempted to harm himself by knocking against the walls of the remand cell and as a result was transferred to a padded cell. There too he was observed to have attempted to remove the wire casing of the padded wall and attempted to pull the wire close to his neck. S/Sgt Raymond Tan confirmed that he also learnt that the accused later attempted to commit suicide whilst at the Queenstown Remand Prison.

Close of prosecution

23 At the close of the prosecution's case, counsel for the accused did not make any submission. Nevertheless, after hearing the prosecution's submission and having regard to all the evidence adduced, I was satisfied that the prosecution had made out a case, which if unrebutted would warrant the conviction of the accused. Consequently the standard allocution was administered and the courses open explained to him. In the event, the accused elected to give evidence from the witness box.

Evidence of the accused

24 The evidence of the accused, insofar as was material, was as follows.

Family background and personal circumstances

25 He was born in Thailand on 28 August 1974. He was known to his friends and family as 'Uthorn'. His father is a farmer. His mother is currently mentally incapacitated, unable to work and sometimes even unable to visit temples. He is the youngest in a family of seven children. He studied up to secondary six in a Thai medium school. He left school at the age of about 18 and started working as a factory hand and later as a construction worker.

26 He was once married to a woman named 'Urai Wan'. She bore him a child, a boy who is now three years of age. His family has a history of mental illness. His mother has been mentally ill for some time and is on medication. One of his brothers also suffers from mental illness amounting to insanity.

27 Whilst he was in Thailand, at times he did not know what he was actually doing. Whenever he tried to think a little more, his head became 'hot'. As a result, his father took him to Dr Samsak, a medical doctor and was given some medication for his symptoms. The medicine prescribed to him was similar to those given to his mother. Since then he had been on medication to alleviate bouts of stress he would constantly be under.

28 He also suffered from sleeplessness. To rid of it, he had to resort to paracetamol tablets; the dosage for each occasion increased from three tablets initially to six to seven later.

29 His wife left him for another man who is younger than her. As he loved her dearly, he entertained thoughts of ending his life. He even went to the extent of handing over a gun to his wife on one occasion and invited her to commit suicide jointly with him. Fortunately, his mother happened to arrive at the scene and the tragedy did not materialise. On another occasion before his wife left him for good, he rode a motorcycle with his wife as a pillion and crashed into a lamp post. The result was that both of them were injured and he had to spend about two months in the hospital for a broken shoulder bone. He also on several occasions together with his wife attempted to end their lives by hanging. But on each occasion, his wife would call for help and the attempts did not succeed.

30 He did not understand what was happening to him. He was greatly affected by his separation from his wife and son. He in fact wanted to take care of his son but his mother-in-law would not let him.

31 At times he was not conscious of what he was doing. Sometimes he left home naked; he was forgetful; he became very suspicious for no apparent reason; he did not trust anyone. Before he came to Singapore he always carried guns. He was under stress and used to shoot aimlessly into the sky. He did not however seek any medical attention because he was afraid of seeing doctors but he visited the clinic his mother used to go to.

32 He was tormented by one of his elder brothers. This brother used to bully him and beat him up for no reason. He did not seem to like him. He recalled an instance when his brother used a knife to cut him up so badly that he was given 11 stitches for the injuries. He was also often mocked by his fellow pupils in school because he used to do things which the others did not. He used to wear clothes inside out when he came out of the bathroom. He also frequently shouted whilst the classes were in session. Whilst in Thailand he used to smoke a lot and drink so excessively that once he had to be warded in a hospital for about two or three weeks. He drank because he wanted to relieve his stress.

First visit to Singapore

33 He first came to Singapore sometime in 1998. Although he was told that he would be entering Singapore lawfully by the person to whom he had paid 50,000 Baht to arrange the trip, things took an ugly turn when he arrived in Malaysia. There he was, to his disappointment, made to hide inside a bus and was smuggled into Singapore. He was caught upon arrival, arrested for illegal entry and in the event repatriated to Thailand at the end of 1998.

Next visit

34 Sometime at the end of 1999, he returned to Singapore, this time legally. He paid about 100,000 Baht to the agent for this trip. He was employed by Lean Hin Lee Contractor Pte Ltd on a valid work permit. He was paid a salary of \$23 per day. His normal working hours were from 8.00am to 5.00pm. After that it was overtime work. Initially he used to work even on Sundays. He was required to do all sorts of work at the construction site involving digging, formwork, cementing, dismantling and sometimes steel-work. For his work, he was issued with a normal hammer, a hook hammer, a safety helmet, a bag of nails and a spanner. He identified exh P-177 as the hook hammer that was issued to him.

35 Recounting his relationship with his fellow workers and roommates at the construction site, he said he treated them with respect as his elders. However, for reasons unknown to him, he did not like to talk to them and seldom did.

36 Initially, when he first started at his job, he was able to cope with his work. Later he encountered problems. About a month prior to his arrest, his faculties did not seem to function well. His performance was dotted with 'mistakes'. He was under stress and lost interest in doing overtime work as he did not have the will power to do so (page 1027 of the NE). Yet, he forced himself to work for fear that his salary would be deducted. He wanted to return to Thailand and he made this known to his boss Ah Chai (PW-24 Chew). He could not concentrate on his work; his head was very hot and that seemed to recur almost everyday. Whenever he had such a sensation, he would pour water on his head; he took paracetamol daily; his body was weak (page 1029 of the NE). He had constant headaches and was unable to sleep. To relieve his stress he began to shout. This he did either by going to the seaside near his quarters after work or whilst sitting (page 1030, lines 1 to 5 of the NE).

37 He visited Pasir Ris Park almost everyday and spent countless hours there without being aware of the time he remained there. On one occasion when he looked at a child at the park, he could not control his emotions and started crying with the result that the person who accompanied the child had to take the child away from that place.

38 He did not confide his problems to anyone, not even to his foreman. He did not trust anyone. He liked listening to their stories but no one knew his. Commenting on the evidence of his colleagues who said he used to listen to music whilst he was in his room, he said that he did but most of the songs he used to listen concerned life as they had the effect of alleviating his stress.

39 He claimed that he drank a lot to relieve stress (page 1033 and 1034 of the NE). Recalling the incident when he injured a dog, he said that about one or two months prior to his arrest, after he finished work at about 5.00pm, he made a telephone call to his father. His father told him that he missed his grandson, referring to the accused's infant son. As the accused also missed his son he informed his father that he wanted to return home. He then kept himself inside his room for a while. Later he came down to the kitchen area where he saw his colleague Samran drinking. Saneh and

Somphan also joined them.

40 Presently, Samran left the kitchen area briefly to buy another drink, leaving the accused, Somphan and Saneh behind. Moments later the accused also left the place to retrieve the cell phone he had left in his quarters for charging its battery and returned immediately thereafter. Samran also returned at about this time. Whilst all of them were resuming their drinks, Samran complained to them that he had lost \$200 which he had kept inside his cell phone. None of them present believed that Samran had indeed lost any money. The accused who had only \$100 with him showed Samran the cash and instantly removed a gold chain he was wearing, handed it to Samran telling him that he could sell the chain, take \$200 from the proceeds and return the balance to him. Samran declined the offer.

41 Later, the accused got up to prepare food for the others. At that time, he heard his colleagues talking about their family, their wives and children. Suddenly, whilst the accused was slicing the meat, he grabbed hold of the dog standing nearby and used the kitchen knife to slash its back. He did not know what he was doing and regained his faculties only when he heard the dog crying (page 1040 of the NE). He did not know why he hurt the dog.

42 Narrating his friendship with his girlfriend Phensuwan he said that he had first met her about three to four months prior to his arrest when she used to come to the worksite to sell food. Later they became close. In examination-in-chief, the accused claimed that he had sex with her on one or two occasions. But in cross-examination, he denied having sex with her and said that he did not have any sexual urge and could not perform.

43 He claimed that he had been intending to end his relationship with Phensuwan as he was aware that they both belonged to different backgrounds and worse, her mother did not quite like him. However, he could not end the relationship as he felt that such a move would hurt her.

44 Speaking about the gambling sessions that went on at the worksite on pay days, he confirmed that he and his colleagues usually played a card game known as 'Poke Deng' on pay days and invariably on all occasions he would be the banker. He claimed that except on 9 June 2000 when he lost about \$400, he was very successful in gambling and that he was never short of cash. He denied that on 9 June 2000, after losing all his cash, he approached Samran for a loan. As to the suggestion that he was broke on 14 June 2000 and as a result his girlfriend had to foot his MRT fare, pay for his dinner and offer him \$10, he denied it. He claimed that he would never accept any monetary help from anyone other than his mother. He asserted that he had about \$400 with him that day but when Phensuwan gave him \$10 he did not decline it and simply kept it in his wallet, although he was puzzled by her offer.

45 He said that he had been a friend of one Wanchai Meeying (Wanchai) since young. Wanchai arrived in Singapore illegally and managed to find a good employer. They met frequently. Wanchai had become his confidant to whom the accused could relate his personal problems. When he was depressed he would always confide in him. Wanchai tried to help him by taking him to church.

46 He claimed that after 9 June 2000 until his arrest on 16 June 2000, he did not do any work at the construction site. He averred that after collecting his salary on 9 June 2000 he informed his supervisor that he was not going to work anymore. However, each night he returned to his quarters to sleep there. He stopped work because he was 'discouraged ... did not feel like working and [was] unable to work ... (page 1081, lines 19-20).

Events of 14 June 2000

47 On 14 June 2000 he was with Wanchai the whole day. Later after dinner at a Geylang seafood restaurant both of them ambled along to Golden Mile Complex at Beach Road. On their way, they came across a group of Thais near a park. One of the group members who looked inebriate uttered something. Wanchai and the accused ignored him. Suddenly, a slipper was hurled in the direction of Wanchai and landed on his back. Wanchai was not amused. He turned around, walked up to the drunk who threw the missile, confronted the person and told him that one Thai should not behave in that manner to another Thai. Suddenly, there was a brawl and one of the Thais in the group punched Wanchai. The accused managed to steer Wanchai out of the melee and as they started running from the scene, three or four persons from the group gave chase and eventually caught up with the accused and Wanchai. A fight ensued. In the end, both of them were able to subdue the assailants. The accused presently heard an object dropping on the ground and he instinctively picked it up (page 1087 lines 11 and 12 of the NE).

48 In the event, both of them bounded up to the Golden Mile Complex and stopped close to a bus-stop near the complex. There the accused tucked the object which he had earlier picked up under his jacket. He was at that time wearing a pair of trousers, a T-shirt and a jacket over it. The object he had just tucked in was a metal pipe.

49 He noticed Wanchai who was bleeding from his nose was wiping the blood with his T-shirt. Shortly thereafter, Wanchai left the accused after intimating that they should meet again the following day at the Golden Mile Complex.

50 The accused managed to get an NTUC taxi to take him to his quarters for the night. After he boarded the taxi, he told the taxi driver to proceed to Lorong Halus. He told him to take the expressway towards Jalan Eunos through Kaki Bukit and thence to Pasir Ris.

51 The accused was seated at the rear of the taxi somewhere near to the centre and gave directions to the taxi driver. The driver followed his instructions and continued driving. Suddenly the accused sensed something amiss. He noticed that the taxi driver was peering at him through the rear view mirror. The accused then looked at himself and realised that the left front of his jacket was stained with blood. The accused tried to avoid the gaze of the driver and moved to the left. The driver still kept on looking at him. The accused became uncomfortable and started imagining a lot of things. Soon the driver asked him in English: 'You fighting' (page 1097, lines 1 to 8). The accused shook his head and replied: 'No, no.' He was worried. He thought that the taxi driver was going to call the police through his handphone. When he saw the driver pressing some numbers on his phone, the accused made a guttural sound: "Ahem Ahem" – as if clearing his throat. The driver at once put aside his phone. The driver muttered something in Chinese which the accused could not make out. He felt very uneasy and was unable to relate the thoughts which went through his mind (page 1100 of the NE).

52 The taxi had by now arrived at Lorong Halus. The accused changed his mind at this point of time and instructed the taxi driver to continue driving straight. The driver obliged. In the event, they came to a traffic light at a cross-junction nearby. The accused directed the driver to turn left without knowing where that route would lead them to. Shortly thereafter, the accused told the taxi driver to stop and inquired about the fare.

53 At this juncture, the taxi driver again attempted to use his phone. The accused could not really recall what had happened thereafter. When he regained consciousness, he noticed that the taxi driver had already collapsed (page 1102, lines 6 to 10 of the NE). Presently, he grabbed the handphone from the dashboard of the vehicle, opened the vehicle door and bolted towards the cross-junction nearby.

54 He recalled that when he saw the taxi driver collapse, he was holding the metal pipe which he had earlier tucked under the waistband of his trousers.

55 As he arrived at the cross-junction after the incident, he happened to observe the 7-Eleven store which he used to patronize on many an occasion. Once he had regained his bearings, he started running and soon arrived at a bus-stop. There he noticed that the metal pipe he was holding was stained with blood. He also realised that he was also then holding the driver's handphone as well as his wallet (page 1104 of the NE). He then discarded the blood-stained metal pipe and his jacket into a dustbin. Thereafter, he examined the taxi driver's wallet and after removing the driver's senior citizen's card and cash amounting to \$60, he discarded the wallet into a dustbin.

56 He was frustrated with himself and did not understand 'how [he] had used the pipe to hit [the taxi driver]' (page 1107, lines 1 to 10).

57 When he viewed the taxi driver's senior citizen card, he was reminded of his father; the driver looked like his father. His father had always advised him to face things and not to run away from problems. The accused mused: 'I really want someone to answer my questions' ... (page 1111, line 17 of the NE) [about] the 'things that had happened to me, why and how it had happened' (page 1112, line 1 of the NE).

58 He did not know why he decided to take the \$60 from the wallet before he threw it away. As to the hand phone he removed from the taxi, he wanted to destroy it first but in the end he retained it with him. From the bus-stop he walked towards his work site.

59 On the way to his quarters (which was about 200 metres from the bus-stop) he kept on looking at the taxi-driver's senior citizen card until he was able to memorise the name of the driver. Before he reached his living quarters, he stopped by at a Chinese altar at the construction site office where he lighted a few joss sticks and prayed for forgiveness and the well-being of the wounded driver.

60 Eventually he arrived at his quarters. He could not sleep even after a shower. He was confused. He wished someone could understand and help him. He then decided to call the police and dialled 999. However, when he heard a woman's voice on the other end, he was at a loss and was unable to communicate. As he knew only a few words of English, he left the phone unattended for a short period. He wanted to relate to the police what had happened but in the event he did not.

61 Subsequently, he decided to call Montree with a view to getting in touch with his friend Tossapol to tell him everything about the incident. Tossapol and Montree were located at a different work place, a few kilometres away. Montree could not be reached. The handphone he had with him was in the 'on-mode' all the while. Sometime later he heard the phone ring. He pressed the 'yes' button to answer the phone but the caller did not say anything. After that he switched the phone off.

62 On the morning of 15 June 2000, he did not go to work. Instead, he went to Golden Mile Complex at about 9.00 to 10.00am to meet Wanchai. He did not relate to Wanchai what had happened the preceding night. The accused by then had made up his mind not to run away. He surmised that had he related the events to Wanchai, the latter would have smuggled him away, even though his passport was still with his employers.

63 Wanchai told the accused that he had to leave for home to attend to some problems. The accused then gave him \$300 leaving a balance of about \$100 excluding the money he had taken from the taxi driver's wallet.

64 Sometime around noon that day, the accused returned to his quarters and learnt that a team of police officers had visited the site earlier. He was also told that his supervisor Chew wanted to see him in the canteen. He later saw his supervisor and when asked, informed him that he would report for work the next day, although he really did not intend to work any longer.

65 After speaking with his supervisor, he left his quarters to meet Tossapol. On his way, at the entrance to the Pasir Ris MRT Station, he handed the \$60 which he had taken from the taxi driver to a disabled person busking nearby. He then took out the SIM card from the handphone of the taxi driver and threw it in the dustbin nearby. This done, he left for Tossapol's quarters near Jalan Eunus. He did not, however, meet Tossapol as he was advised by one of the foremen to leave the place immediately. There were some policemen present at the site.

66 He later returned to his worksite. Before reaching his living quarters he stopped at the Chinese altar again. There, after saying prayers, he took out the card of the taxi driver in his possession, tore it into two, placed it on top of an empty paint tin lying in the vicinity and returned to his quarters. Once at his quarters, he placed the handphone in one of his safety boots. He placed one of his wallets which contained the photograph of his girlfriend in another boot.

67 He said that before his arrest he also met his girlfriend on the night of 15 June 2000. He told her that it was likely that he would be arrested and if the police were to question her, she should say that she was with him at the Golden Mile Complex from 6.00pm on 14 June 2000 till 6.00 am the following day (ie, 15 June 2000). His girlfriend was very distressed. She suggested to him that he should leave Singapore for Thailand and stay with her elder brother's friends at a military camp there. But he made it known to her that he was not going to run away.

68 He was arrested at about 4.15am on 16 June 2000 and thereafter taken to the CID. At the CID lock-up he tried to harm himself by banging his head against the wall. Following an alarm raised by two of his cell mates, he was transferred to a padded cell. There again he tried to harm himself by removing some wires from the padding. His attempts were thwarted. He said that he banged his head against the wall because his head was filled with a lot of thoughts (page 1164, line 4 of the NE). He was thinking about the taxi driver as he did not expect the driver to die.

69 After he was transferred to the Queenstown Remand Prison, he again tried to hang himself. He tore a towel into small ribbons, joined them together and made a loop. He then used some toilet tissues to cover the lens of the surveillance camera inside the cell. He was planning to end his life. Whilst he was at it, the warden of the remand prison arrived and in the event he was transferred to another cell where he was chained to a bed for sometime. At some point in time of his remand, he was also sent to Changi Prison Hospital where he remained for a few days.

70 He produced a copy of a letter which he wrote to Wanchai Meeying whilst he was at the Queenstown Remand Prison. This letter produced by the defence (exh D-1/P-131) reads as follows:

I wish to tell you about what had happened in detail as I feel it is the right time to do so.

It is only now since my arrest that my mind is in a state of peace Previously, I was very stressed like I had been in the past. They never understood me at all. For over ten years that we knew each other, I think you are the only person who understands me the most. We have lived and grown up together.

All the while before my payday, the 9th, I have accompanied you to look for a

job in Jurong until the last day – the date of the incident. That night, there was a group of people drinking rice wine. One of the people from the group threw his shoes and hit your back. After our separation at the bus stop, I took a taxi back to my quarters. On the way the problem developed. The taxi driver saw some blood stains on my shirt and kept staring at them. The blood stains were from your bleeding nose earlier. I felt a very deep sense of mistrust and self-consciousness, something that I felt before on many occasions. It felt as if he really wanted to tell on me. I did not feel like my usual self.

Before the taxi was going to turn into Lorong Ah Loo, I told the taxi driver to go straight until the car reached a cross section. I instructed him to turn left. Earlier, I saw him trying to call the police so many times that it aroused my suspicions. When the taxi turned into the left lane as I instructed, I told him to stop the car. I saw him pressing the fare meter and trying to dial numbers on his phone once more. I used a metal object, which I took from the group of people mentioned earlier, to hit his head. At that time, I did not know how it had happened. I saw him collapse. I grabbed his phone and took his wallet, which was placed on the dashboard. I quickly ran to a bus stop and stopped there. I did not know then as to why I took his wallet along with me. I tried very hard to find the reasons but to no avail. I took off my shirt and threw it together with the metal object into the rubbish bin at the bus stop. I opened the wallet and took out the taxi driver's card and some money before throwing the wallet into the rubbish bin without checking other items in it. The amount of money, I took if I am not wrong, was about \$60/-.

I walked back to my quarters. On the way, I kept looking at the driver's card until I could remember his name clearly. His name was Ong Huay Dee, aged 65, Singapore national. When I reached the site office where a Chinese altar was set up nearby, I lighted some joss sticks to pray for his forgiveness and prayed to Buddha that nothing would happen to him. I returned to my quarters. That whole night I could not sleep at all. The following morning, I decided to call the police. I did dial but I, as you know my English was poor and I was afraid the police might not understand me, later changed my mind. I called "Montree" instead with the intention of telling "Thotsaphon" about what had happened but the line was engaged.

That morning, I thought very hard about what to do. I heard the phone rang about 2-3 times and that made me more nervous. I did not tell my colleagues at the work site about the incident as I was still confused. I took a shower and later left for Golden Mile Complex to meet you as arranged earlier. When you saw me, you asked me what had happened as I looked unwell. I told you that there was nothing wrong with me. I did not tell you about the incident because I did not want you to worry about me. After I gave you some money for your trip back to Thailand, I returned to my quarters. While I was there, my friends told me that the police had earlier come to our work site. I had, at that moment in time, thought the police came to look for me. I then went to the G & W construction site where "Thotsaphon" worked. Upon arriving there, I saw the police arrested my friends. I thought the police must have known every thing about the incident and would arrest me at my quarters that night.

I went to meet my girl friend, Nong Tan, at Geylang, Lor 30. I did not tell her

about the incident but instead instructed her if any person asked her about my whereabouts on the night before, she had to tell them she was with me that night. At that time, I thought if I were to be apprehended by the police, I would ask to see her at the police station.

Do you still remember that beggar? I gave him the money I took from Mr Ong Huay Dee. I also discarded his phone's SIM card into a rubbish bin at the MRT station. I later went back to my site office again. There, I lighted some joss sticks and swore that I would not run away from the police. All these while, the taxi driver's card was with me. I went back to the altar to ask for his forgiveness again. Thereafter, I placed the card on a can and returned to my quarters.

As expected, the police came to the quarters. While I was being handcuffed, I felt my face being stamped by a police's boot. I have never been treated as such manner since birth. They never gave me any chance to speak. I had no opportunity to speak from the date of my arrest until I was transferred to Changi prison. I did confide in 2 strangers. It was so stressful that I thought of committing suicide at the C.I.D. once and at the Queenstown prison about 2 – 3 times. I found myself pulling my hair continuously until I almost became bald. I also resorted to writing to relieve my stress. I even asked the prison wardens to kill me.

They believe that they have all the evidence to convict me. I just want them to understand my feelings. While I was in C.I.D., I was told that Mr. Ong Huay Dee had passed away. Upon hearing the news, I was very saddened. I believed they thought I must have intended to kill him. You and my parents know me well that I have never had such ill intention in my life.

I cried the whole of last night and decided that this was going to be the last time I would think of this case. I do not want such a terrible incident to happen to me again.

Do you remember what I told you about my dream of coming here again and the reasons – the cleanliness and progress of this country. I tried to study very hard so that I could pass the skill tests. I did not only pass the tests but also emerged as number one in my class. As a result, my dream was realised and I am now here.

Since youth, I have, for almost 25 years, been dreaming of owning a hand phone and I really had one in Singapore. Unfortunately, I had such a bad friend like "Montree" who caused me trouble. I did not expect that my return to Singapore this time has shattered my dreams.

I believe you can understand my feeling now. You also know that I have a mental problem as you even took me to a church.

I want you to pass this letter to my father, mother, sisters and brothers to read so that they will know what has happened to me. I hope they will understand me.

Even though, Singapore has a lot of rules and regulations, I have complied and

never challenged them. You must know that I am capable of this.

71 The next witness called by the defence was Supt Lim Chong Teng from the Queenstown Remand Prison. In his evidence, he confirmed that the accused was reported to have attempted to commit suicide on one occasion by joining pieces of a torn towel. He further mentioned that on a separate occasion, the accused used toilet paper to block a closed circuit TV camera installed in his cell. Supt Lim added that the accused also on an occasion scribbled some poems in memory of his girlfriend and his mother. The words were written in blood.

72 The other witness for the defence was Dr Douglas Kong Sim Guan ('Dr Kong'), a consultant psychiatrist in private practice. His opinion as appears in his report dated 22 January 2001 reads thus:

Opinion

From the account provided by Khwan-On and the mental state examination, it is my opinion that Khwan-On has been suffering from a Major Depression since the beginning of 2000. This depression is characterized by symptoms of insomnia, depression, weepiness, suicidal and negative thoughts, social withdrawal, early morning awakening, feelings of tension (relieved by shouting) and abuse of alcohol. He also had somatic symptoms of palpitation, breathlessness (dyspnoea), headaches, sensation of his head bursting and a "hot" sensation. Khwan-On was predisposed to a Major Depressive illness by the following factors: his mother had a history of psychiatric treatment, he had a history of physical abuse from his eldest brother for many years, he had an introverted personality and related poorly with a tendency to keep things to himself and marital difficulties including being rejected by his wife and feeling inadequate, insecure and a loss of self-esteem.

This Major Depression had been untreated and Khwan-On had relied on shouting to relieve his tension, and crying and alcohol to relieve his sensation of pain and sadness. His depression had caused him to sometimes lose control of himself and when he was upset and dazed by his friend's description of their happy families, he instinctively became affected and without realizing, he was inflicting harm with a knife on a helpless dog. Fortunately, he realized it when he saw blood and stopped what he did. However, the incident in the taxi was not so. If not for the scuffle that occurred when Wanchai was attacked by some Thai men, which led to Wanchai having a bleeding nose, his shirt would not have been bloodstained and his taxi ride back home would be uneventful as it had been previously.

As it turned out, Wanchai sustained a bleeding nose during the scuffle and in his desire to help, Wanchai's bleed got to stained his shirt and picked up a metal rod thrown at them. It was the bloodstained shirt that attracted the attention of the taxi driver who according to Khwan-On tried to contact the police on the handphone. The taxi driver was probably being civic minded or doing it for his self-protection in case he would be harmed by the passenger that was Khwan-On. But the action of the taxi driver caused Khwan-On to be fearful and somewhat paranoid. Khwan-On was probably sensitized to criminal offences by his arrest for being an illegal worker on his first visit to Singapore. Having been caned and having been in jail, a fear of the law and the police of Singapore would have been ingrained in his memory. These fears were likely to be aroused by the act of the taxi driver dialing a number three times causing Khwan-On to

deduce that the number dialed was the number to the police, 999. These paranoid fears about what would happen to him if the police were to apprehend him for whatever reasons probably prompted him to move away from the driver's gaze and to direct the driver away from his actual worksite where he stayed.

If he had alighted safely and got away, the alleged offence would not have occurred. It was unfortunate that the driver had dialed the handphone and this caused him to be in a state of panic which caused him to be in a dazed or dissociative state similar to that of the dazed state a month before the alleged offence when he used a knife to cut a harmless dog. This state of panic induced by his paranoid fears as to what would happen if the driver succeeded in informing the police led Khwan-On to develop a Paranoid Reaction. His instinctive reaction was to protect himself and as he had the metal rod which he picked up at the scene of the scuffle to protect himself, he used it to vent his anger and frustration at the taxidriver. He then took the object of his fear, the handphone and the wallet together with it and fled.

He appeared to be acting in the belief that the driver was out to harm him by calling the police. He also appeared to harbour beliefs that if the police were to find him with a bloodstained shirt, he would be in trouble with the law again and since the Depression had impaired his judgment and reasoning process, it was natural that these beliefs became transformed into paranoid fears and thoughts upon which he acted and thus he assaulted the taxi driver in the belief that he was defending himself without knowing why. He was in a state of confusion, his mind was dazed and he was probably in a dissociative state induced by the Depressive Illness as well as the paranoid fears and the attendant Paranoid Reaction that was activated by the driver's actions. It is therefore my opinion that the Depression had impaired his perception, judgment, concentration, and executive function. Due to a confluence of circumstances which included the scuffle, the bloodstain and the metal rod and the behaviour of the taxi driver; paranoid ideas, fears and thoughts were aroused and activated. These constituted a Paranoid Reaction which caused him to dissociate when he went into a state of panic just before he was about to alight and set in motion by the perception that the driver was dialing for the police. As such, Khwan-On might not be in full control of his mental capacity at the time of the offence and he might not be aware of the likely consequences of his actions as he acted in a state of confusion and panic. In this sense, Khwan-On was labouring under a defective state of mind momentarily when he was committing the alleged offence and the offence was committed as a result of a reaction to coincidental circumstances occurring in sequence rather than that of a premeditated plan that he conceived of prior to the offence. Khwan-On came out of the confusional state which characterised his Paranoid Reaction, when he reached the second bus stop and he sat down in a safe place and had the time to contemplate what he had just done. The realization that he had done something terrible and wrong set in at that time and he began to have feelings of revulsion and remorse over the events with attendant feelings of anger and regret.

73 In his testimony, Dr Kong said that having heard and observed the accused testifying in court, he was of the view that the accused probably suffered dissociative amnesia. Dr Kong further said that the narration of crucial events in the accused's police statements as well as in court as to what

happened in the taxi, was probably a reconstructed account. He suggested that the reconstruction was done by the accused after being made aware of the events by the police. Dr Kong stated that dissociative amnesia could set in when a person is under severe stress. Further according to him, in the case of the accused it set in when the taxi driver pressed the meter and attempted to use the hand phone. Dr Kong opined that the accused came out of the dissociative state when he was at the bus stop. Dr Kong's explanation of the accused's behaviour in the taxi was that he was suffering from a brief psychotic disorder.

74 Dr Kong further testified that the accused fulfilled the criteria for major depression. Commenting on the attempt by the accused to call the police just after the incident, Dr Kong said that it reflected a remorseful action on the part of the accused to get people to understand what he had gone through.

75 During cross-examination Dr Kong conceded that in his medical report he did not mention 'brief psychotic disorder' and 'dissociative amnesia'. Dr Kong amended his medical report to read that "the accused had been suffering from a major depression which had its beginnings from January to February 2000" instead of his earlier assertion that "the accused had been suffering from a major depression from the beginning of January to February 2000."

76 In sum, Dr Kong's conclusion was that in the months of May and June 2000, the accused was suffering from major depression (page 1660, lines 13 to 19 of the NE). He also opined that a depressed person can work at tremendous cost to himself (page 1666, lines 2 to 11 of the NE) and that explained how he was able to make between \$4,000 to \$5,000 a month in gambling for a number of months.

Rebuttal evidence

77 Dr Tan was recalled by the prosecution to rebut and comment on the evidence of Dr Kong without any objection from the defence. The substance of Dr Tan's rebuttal evidence had been succinctly recapitulated by the learned DPP in her submission and the salient features therein were to the following effect.

78 Dr Tan testified that having regard to the diagnostic guidelines in ICD-10 (International Classification of Diseases) which he had applied in assessing the accused, he was of the opinion that the accused was not suffering from any depressive episode preceding, or at the time of, the offence. According to the diagnostic guidelines in the ICD-10, for a definite diagnosis of a depressive episode, at least two of the following symptoms must be presented:

- (i) depressed mood;
- (ii) loss of interest and enjoyment;
- (iii) increased fatiguability;

plus at least two of the following symptoms:

- (i) reduced concentration and attention;
- (ii) reduced self-esteem and self confidence;
- (iii) ideas of guilt and unworthiness;

- (iv) bleak and pessimistic views of the future;
- (v) ideas or acts of self-harm or suicide;
- (vi) disturbed sleep;
- (vii) diminished appetite.

79 Dr Tan asserted that the accused was not suffering from any depressive episode preceding, or at the time the offence was committed. His reasons were as follows.

(i) The accused was able to maintain an active sexual relationship with Phensuwan. It was unlikely that the accused would be able to do that if he were indeed depressed. At any rate, if the accused had been depressed before the killing, he would be suffering from anhedonia ie. a condition where one lacks the ability to enjoy oneself.

(ii) The evidence also showed that the accused listened to music, socialised with his Thai friends at Golden Mile Complex on Sundays, gambled on payday every month from the time he arrived in Singapore till the time of his arrest. A person would have considerable difficulty in continuing with social work or domestic activities if he were suffering from moderate to severe depressive episodes.

(iii) There was evidence that the accused was working overtime on sixteen occasions in the month of May, and on three days out of nine days in June 2000. If the accused was indeed suffering from depressive episodes, it was unlikely that he would be able to work overtime so frequently.

(iv) Poh (the accused's supervisor) had informed Dr Tan that the accused worked like other Thai workers. In addition, the testimony of the other Thai workers who were the accused's colleagues was that they did not observe any behaviour of the accused which suggested that he had a mental illness. This evidence supported the view that the accused was able to work normally and was not depressed prior to or at the time of the commission of the offence.

(v) The accused had told Dr Tan that he did not work from 9 June 2000 onwards until the date of the offence because he was busy trying to secure employment for his friend "Wanchai Meeyang". If the accused had been severely depressed on 15 June 2000, he would have been in a poor state by 9 June 2000 and would not have the will nor the capacity to actively job-search for a friend in the one week preceding the offence.

(vi) In addition, the accused was able to give a clear account of the events of the evening before and after the offence was committed. He was able to give clear and precise directions to the deceased as he (the accused) guided him from Golden Mile Complex to Pasir Ris, and he was also able to give details of the events culminating in the accused hitting the deceased on the head and thereafter running away from the scene and disposing of some of the deceased's belongings.

80 Dr Tan expressed his view that the accused was not suffering from any depressive episode,

applying either the ICD-10 diagnostic guidelines or the DSM-IV diagnostic guidelines. The DSM-IV diagnostic guidelines are similar to the ICD-10 guidelines.

81 Dr Tan, however, mentioned in his psychiatric report (P-121) that the accused was suffering from a mild depressive episode post-offence, after his arrest, as classified under F32.0 ICD-10. Dr Tan had also tendered literature to show that the accused's suicide attempts whilst in custody was not due to him being severely depressed at the time of the offence but due to reactive depression based on his later circumstances that he was facing a serious charge and had been deprived of his liberty.

82 Dr Tan's conclusion was that the accused was not suffering from any mental illness that had impaired his mental responsibility at the time of the offence.

83 The prosecution also called with the leave of court another worker by the name of Noordin Bin Mohd Amin (PW-45) to rebut the averments of the accused in relation to his mental condition during the last few months of his employment with Lean Hin Lee. Noordin testified that in June 2000 he was a construction carpenter with Lian Hin Lee. He was in their employment for about 10 years and had been working at the worksite at Lorong Halus between April and June 2000. He said that he worked with the accused from about May 2000 to June 2000. The accused was in his team and Noordin's role in the team was to direct the Thai workers in the work they should carry out. He spoke little Thai and instructions were given by him to the Thai workers mostly by sign language.

84 Noordin denied that the accused had told him that he did not want to work any further and wanted to return home. The accused did not tell him at any stage that he was ill or that his memory was so bad that he was unable to work. According to Noordin the accused was able to follow instructions and was able to complete the job allocated to him. He added that the work assigned by him to the accused was no easier than what was assigned to others in the team. He described the accused's standard of work as "OK" but the accused was sometimes careless. When asked to clarify he said that the accused at times had the tendency to walk around and smoke cigarettes.

Conclusion

85 The charge against the accused was an offence of murder punishable under s 302 of the Penal Code. The Indian Supreme Court in **Virsa Singh v State of Punjab** AIR 1958 SC 465 (per Bose J) at 467 dealing with the third limb of s 300 of the Indian Penal Code which is identical to the provisions of our Penal Code, enumerated the requisite ingredients that ought to be established and proved to bring home the charge of murder against an accused, in the following terms:

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

...

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary

course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

86 In ***Mimi Wong & Anor v Public Prosecutor*** [1972] 2 MLJ 75 at 78, the Singapore Court of Criminal Appeal affirmed the principles enunciated by the Indian Supreme Court in ***Virsa Singh*** as follows:

... we are in full agreement with the Supreme Court of India in *Virsa Singh v. State of Punjab* where the correct legal position as regards the third limb of section 300 of the Indian Penal Code (which is in identical terms with our section 300) has been set out in the judgment of Bose J.

87 In ***Public Prosecutor v Visuvanathan*** [1978] 1 MLJ 159 at 161, Choor Singh J further elucidated the application of the third limb to s 300 of the Penal Code in these terms:

... all that the prosecution need prove is –

1. that the accused did an act which caused the death of the deceased;
2. that the said act was done with the intention of causing bodily injury;
3. that the injury caused –
 - (a) was intended and was not accidental or otherwise unintentional; and
 - (b) was sufficient in the ordinary course of nature to cause death.

There is no other requirement. ...

88 In ***Tan Cheow Bock v Public Prosecutor*** [1991] 3 MLJ 404 at 410, the Singapore Court of Criminal Appeal again reaffirmed the principles articulated in ***Visuvanathan***.

89 Returning to the issues at hand, there was no dispute that the prosecution had conclusively proved that: (a) the accused was the one who had inflicted the injuries found on the deceased; and (b) the injuries, particularly items 1 and 4 which were found inflicted on the deceased's head were, according to the forensic pathologist Dr Teo, sufficient in the ordinary course of nature to cause the death of the victim.

90 The only aspect which was put in issue at the trial concerned the mental responsibility of the accused. In this, there were two strands in the arguments advanced on his behalf by the defence counsel. First, it was submitted that the accused at the time he inflicted those injuries was suffering from an abnormality of mind as had substantially impaired his mental responsibility so as to avail him of the defence of diminished responsibility as provided under Exception 7 to s 300 of the Penal Code.

91 In this connection, reliance and references were made to the accused's background, his behavioural pattern both in his home country as well as at his work place in Singapore and most importantly the opinion of Dr Douglas Kong who maintained that the accused's mental responsibility was substantially impaired at the time of the commission of the offence.

92 The second strand of counsel's argument was in a way hinged to the former. Here, it was argued that inasmuch as the accused was suffering from a mental abnormality during the commission of the offence, the prosecution could not have been said to have proven its case against the accused beyond a reasonable doubt.

93 Before evaluating the medical evidence adduced in this case, it would be instructive to call to mind some well-established principles in relation to the aspect of mental abnormality and the defence of diminished responsibility.

94 The concept of diminished responsibility was introduced into English law by s 2(1) of the Homicide Act 1957 which provides:

... that a person shall not be guilty of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing." As such, the defence of diminished responsibility reduces the crime from murder to manslaughter.

95 This particular defence based on s 2(1) of the English Act (*supra*) was introduced almost in its entirety in Singapore in 1961. Exception 7 to s 300 of the Penal Code provides:

"Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death."

96 There have been a number of decisions dealing with this defence over the years yet the most authoritative exposition of the law on this matter was by Lord Parker CJ in **R v Byrne** (1960) 2 QB 396 at page 403, where he defined 'abnormality of mind' as being:

... a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. ...

97 As to the requisite burden of proof in relation to exceptions to any criminal statutes defining any offence, section 107 of the Evidence Act provides as follows:

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of circumstances.

98 In **Jayasena v The Queen** (1970) AC 618, the Privy Council observed that the foregoing section places a legal burden on the accused if he wants to rely on any exception to liability in the Penal

Code or for that matter on any other exception or provisos in any law defining the offence.

99 In **N Govindasamy v Public Prosecutor** (1976) 2 MLJ 49, the Singapore Court of Criminal Appeal regarded the law as well settled by **Jayasena** and held that the accused had the burden to prove on a balance of probabilities, the existence of circumstances entitling him to a defence.

100 In **Walton v R** (1978) 1 All ER 542, an appeal where the issue of diminished responsibility was considered, Lord Keith of Kinkel delivering the advice of the Privy Council commented at page 546g-h:

These cases make clear that on an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence on the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the accused before, at the time of and after it and any history of mental abnormality. It being recognised that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence. As was pointed out by Lord Parker CJ in R. v. Byrne, what the jury are essentially seeking to ascertain is whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a broad common sense way. ...

101 There is yet another principle which requires mention at this juncture. In **R v Vinagre** [1979] 69 Cr App R at 104, Lawton LJ said:

... "We are sure that it was never intended that pleas should be accepted on flimsy grounds ... It seems to us that pleas to manslaughter on grounds of diminished responsibility should only be accepted where there is clear evidence of mental imbalance."

102 Reverting to the facts in this case, as stated earlier, several background matters concerning the accused were relied on by his counsel to advance the defence of diminished responsibility.

103 Now, first dealing with the mental state of the accused whilst he was in Thailand, it was said that the accused was suffering from mental illness even when he was in Thailand and was receiving treatment from one Dr Somsak almost everyday for about six months before his arrival in Singapore. Curiously, no confirmatory evidence was forthcoming from the defence in this regard despite a long interval between hearings ie from 23 February 2001 and 23 July 2001. When asked, counsel for the accused could only say that his instructions were not to pursue that matter. In my determination, an indifferent answer such as the one given did not lend weight to the accused's account of his antecedent mental condition.

104 The next aspect was in relation to the accused's mental state whilst in Singapore. In this regard the accused's claim was that during the months of May to June 2000, he was unable to concentrate on his work; he had frequent headaches; his brain was not functioning properly; he was suffering from extreme stress and as a result his work hours diminished. But the evidence of his colleagues and the work records produced in told narrated a different story. It appeared from his work records that in the months of May and June he was working as usual. His records established that he had clocked three days overtime in June. However, it should be noted that he stopped work on 9 June 2000. His fellow workers at the worksite also testified that they did not notice that there was anything wrong with the accused either in relation to his work or in relation to his general disposition. The accused's claim that he suffered from lack of concentration also did not tie up with his gambling success when the

accused asserted that he was in fact netting about \$4,000 to \$5,000 a month from gambling alone and that he had lost only once on 9 June 2000. This story coupled with his unwitting averment that he was all the time the banker in gambling sessions, did not seem to support the defence contention that the accused was suffering from deficit of concentration and stress.

105 Returning to Dr Kong's evidence, with respect, I must say that it contained some major inconsistencies. First of all Dr Kong who had earlier reported that the accused had been suffering from a major depression "*since the beginning of 2000*" modified it during cross-examination to read that the accused had been suffering from a major depression "which had its beginnings from January/February 2000." Secondly, in his written report he did not mention that the accused was suffering from "dissociative amnesia", a clinical term which is quite distinct from the "dissociative state" he had mentioned in the report. Another notable inconsistency was in relation to the clinical term: Paranoid Reaction. Dr Kong said that although he had used the term 'Paranoid Reaction' in his report, what he really meant was 'Brief Psychotic Disorder'

106 Dr Kong's evidence in court was that the accused had all the symptoms (1 to 9) of Major Depressive Episode (DSM IV) based on (a) his examination of the accused; (b) the testimony of the accused and (c) the evidence of other witnesses in court. Dr Kong's amended opinion was that the accused was suffering from a major depression which had the beginnings from January to February 2000. However from the evidence proffered by witnesses, such an opinion was not founded on any credible evidence. None of the witnesses had come across the accused being in a depressed mood nearly every day (symptom 1 of Major Depressive Episode in DSM-IV) nor did he appear to have suffered from a markedly diminished interest in all or almost all activities nearly every day (symptom 2). On the contrary, the evidence of his girlfriend, the accused's colleagues and friends was that the accused was behaving no differently from the others. There was also no credible evidence to support the defendants' assertion that the accused had a decrease or increase in his appetite nearly everyday (symptom 3), nor was there any evidence to suggest that he was suffering from any psychomotor retardation (symptom 5). In fact, the facts pointed to the contrary since all his colleagues testified that they had not noticed anything abnormal about the accused and that there was nothing to suggest that his reflexes were slow. The prosecution expert Dr Tan, after citing clinical literature said that where a person was suffering from psychomotor retardation, he would take up to a few minutes to answer even the simplest questions. Dr Tan opined that the fact the accused had injured Samran's dog, did not in itself mean that the accused was suffering from psychomotor agitation as it was probable that the accused could have been intoxicated at that time.

107 Further, the accused did not appear to have suffered from any fatigue or loss of energy (symptom 6). On the contrary, his supervisors and Noordin bin Mohd Amin had testified that the accused worked like other workers and was able to carry out his work properly and was not found to be lethargic.

108 There was also no evidence from the accused's girlfriend or from his other friends (Montree and Tossapol) or from his fellow workers that the accused had manifested any indication or clue as to his alleged recurrent thoughts of death. Further, according to Dr Tan, the suicide attempts whilst the accused was in custody was due to his frustration and fear after his arrest and hence, the accused did not satisfy symptom 9.

109 The evidence adduced by the prosecution further seemed to suggest that the accused was not in a depressed state and was able to go about his daily routine no different from others and maintain social ties normally. It should also be noted that the girlfriend of the accused did not observe the accused to be in a low or depressed mood most of the day nearly everyday. He was able to enjoy her company whenever they were together.

110 Dr Tan had stressed the importance of taking objective facts into consideration in assessing whether a person was suffering from any depressive episodes. This aspect appeared to be missing in the analysis of Dr Kong who seemed to have relied mainly on the subjective account given by the accused. In addition, Dr Tan also stated that for the accused to qualify as suffering from Major Depression, he had to satisfy five or more of the criteria stated in DSM-IV within the same two-week period.

111 In Dr Tan's expert opinion the accused only qualified for symptom 4 which was insomnia. Dr Tan stated that other than the subjective account of insomnia given by the accused, he did not satisfy any other criteria as set out in the DSM-IV for Major Depressive Episode and other than the accused's claim that he had other symptoms, Dr Tan was unable to find any independent evidence to support the accused's claims.

112 Another important feature in the evidence of the accused was that he did not work from 9 June 2000 onwards until the date of the offence because he was busy trying to secure employment for his friend Wanchai. Dr Tan pointed out that if the accused's mental illness had come to a head on 15 June 2000, as was suggested by Dr Kong, the accused would be in a poor state by 9 June 2000 and would not have the will nor the capacity to actively job-search for a friend in the one week preceding the offence.

113 Dr Kong's view was that the accused was suffering from dissociative amnesia. He had apparently formed this opinion only after he had listened to the accused's evidence in court. This was never reflected in his psychiatric report. At any rate, Dr Kong did not satisfy the diagnostic criteria provided in DSM-IV-300.12.

114 Dr Kong claimed that although he had opined in his psychiatric report that the accused was suffering from a Paranoid Reaction (categorised as F23.3 in the ICD-10), he actually meant "Brief Psychotic Disorder" as defined in Kaplan and Saddock's Comprehensive Textbook of Psychiatry. Dr Kong tried to explain that he had diagnosed the accused "functionally" and not "clinically" by terming the accused's state of mind as a Paranoid Reaction in his report when actually the phenomenon was a 'Brief Psychotic Disorder'.

115 Table 13. 1-4 of Kaplan and Saddock's Comprehensive Textbook of Psychiatry sets out that for there to be a diagnosis of Brief Psychotic Episode, following the conditions must be satisfied:

A. Presence of one (or more) of the following symptoms:

- (1) delusions
- (2) hallucinations
- (3) disorganised speech (e.g. frequent derailment or incoherence)
- (4) grossly disorganised or catatonic behaviour

Note: Do not include a symptom if it is a culturally sanctioned response pattern,

B. Duration of an episode of the disturbance is at least 1 day but less than 1 month, with eventual full return to premorbid level of functioning.

C. The disturbance is not better accounted for by a mood disorder with psychotic features, schizoaffective disorder, or schizophrenia and is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition.

116 Dr Kong opined that the accused satisfied Condition A of Table 13. 1-4 as he was suffering from the 'delusion' that the deceased was going to call the police and that he was suffering from 'grossly disorganised behaviour' at the time of the offence. Dr Kong equated "delusion" in his report with the sentence in his report that reads: "... [He] also appeared to harbour beliefs that if the police were to find him with a blood-stained shirt, he would be in trouble with the law again and since the Depression had impaired his judgement and reasoning process, it was natural that these beliefs became transformed into paranoid fears and thoughts ...". Dr Kong has also equated "grossly disorganised behaviour" in his report with "confusional state." Once again Dr Kong's views seemed to be dogged by the ills of omission. In my view, it was strange that Dr Kong did not mention delusions and grossly disorganised behaviour in his report if that was his analysis. Dr Kong tried to explain this by saying that he did not wish to place the accused "in baskets".

117 Dr Tan's rebuttal evidence on this was that the accused's impression that the deceased was going to call the police was a mistaken belief and was not a delusion. Dr Tan explained that a delusion was a false belief that he had no basis. However, the accused in this case had a basis for thinking that the deceased was going to call the police ie, the fact that he was involved in a fight earlier and was wearing a blood-stained jacket. His belief was therefore not a delusion.

118 Dr Tan further testified that there was no evidence that the accused was suffering from delusions or grossly disorganised behaviour since the accused had exhibited purposive behaviour and knew what he was doing.

119 Dr Kong's evidence was that although the Brief Psychotic Disorder had only lasted 20 to 25 minutes, the accused qualified under Condition B of Table 13.1-4.

120 In rebuttal Dr Tan said that it was unlikely for a Brief Psychotic Disorder to set in during such a short span of time. Dr Tan's evidence on this was that 20 to 25 minutes was a far cry from the requirement of '1 day' in Kaplan and Saddock. Dr Tan's criticism was that even though laxity can be given to the time frame, it should not be applied as generously as Dr Kong had done. Dr Tan's opinion was that if the disorder had persisted for example 18 hours then the patient may still qualify under Condition B (see **Kaplan and Saddock**, Table 13 1-4).

121 Reviewing the totality of the evidence, in my determination, the defence of diminished responsibility had not been made out on balance of probabilities. In this regard, I found the accused had not been truthful in his assertions. His claim in the witness box that he removed the metal object from his waist and hit the driver at the back of his head about two to three times in his statement of 15 June 2000 was not something reconstructed as claimed by Dr Kong. In my opinion, he appeared to be fully conscious and was in possession of all his mental faculties throughout the entire taxi journey to the extent that he could give the driver very clear instructions as to the path as well as the turnings to be taken throughout the entire journey. In my determination, the injuries inflicted on the accused were not something done in a moment of daze and dissociative state but in a moment of full clarity and consciousness. Dr Kong's evidence in my view suffered from lack of consistency and appeared to be replete with over-generalisation. In my opinion, Dr Tan's analysis appeared to possess both objectivity and consistency. In the event, I accepted the evidence of Dr Tan that the accused was not suffering from any abnormality of mind as substantially impaired his mental responsibility at the time of the commission of the offence although he suffered a post-arrest depressive episode.

122 In my determination, the prosecution had discharged its ultimate burden in proving the case against the accused beyond a reasonable doubt and that the defence of diminished responsibility as well as the defence based on lack of requisite intention raised on behalf of the accused were plainly unsustainable. There was no evidence that the accused was suffering from any abnormality of mind prior to or at the time of the commission of the offence. In my view, the offence committed was willed and carried out in a cold-blooded manner. In the end, I was satisfied that the prosecution had indeed proven its case against him beyond a reasonable doubt and that he had not, on a balance of probabilities established his defence. Consequently, I found him guilty of the charge on which he was tried, convicted him and sentenced him to death.

Sgd:

MPH RUBIN
Judge

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