Public Prosecutor v Tharema Vejayan s/o Govindasamy
[2009] SGHC 144

Case Number : CC 20/2008

Decision Date : 19 June 2009

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : David Khoo, Stella Tan & Adrian Ooi for the prosecution; S Radakrishnan, Aziz Tayabali, Glenn Knight and Rajan Supramaniam for the defendant

Parties : Public Prosecutor — Tharema Vejayan s/o Govindasamy

Criminal Law – Offences – Murder – General Exceptions – Special Exceptions

19 June 2009

Tay Yong Kwang J:

Introduction

1 The accused is Tharema Vejayan s/o Govindasamy, now 40 years old. He was tried and convicted on the following capital charge:

> [O]n the 1st day of July 2007, at or about 4.41 am, at Block 181 Stirling Road, Singapore, did commit murder by causing the death of one Smaelmeeral Binte Abdul Aziz, female 32 years, and you have thereby committed an offence punishable under Section 302 of the Penal Code, Chapter 224.

Due to scheduling difficulties, the trial took place over several blocks of dates.

2 At around 4.39 am on 1 July 2007, a SBS Transit bus driver, Goh Chin Hock, who was waiting at a bus-stop in front of Block 181 Stirling Road ("Block 181") called the police when he heard a loud 'thud' and discovered the deceased's body lying on the ground of that block. Another witness, Hamzah Bin Rasip, also called the police to report that "someone had jumped down". The deceased was dead by the time paramedics arrived at the scene. She was pronounced dead at about 5.03 am.

The Case for the Prosecution

3 The accused and the deceased married in June 2002. They had two children, a son born in March 2003 and a daughter born in Nov 2005. The deceased filed for divorce in March 2007 and obtained an interim judgment for divorce on 13 June 2007.

4 On 30 June 2007, the night before the deceased met her death, the deceased went drinking with her close friends, Mathinah Baham d/o Samsudeen ("Mathinah") and Selvaranee d/o Kanakasabai ("Selvaranee"). The three met in the evening and visited a pub called Chakrawathy. The deceased stayed there with her friends until about 4am on 1 July 2007 when she left the pub alone to return to her uncle's home in Strathmore Avenue in Queenstown (where she was residing at that point of time).

5 At about 4.06am, the deceased called a mutual friend of hers and of the accused, Abdul Razak s/o P Maudu ("Razak"), telling him that she was drunk and that she was near Queenstown MRT station, which is along Commonwealth Avenue and next to Block 181. Block 181 is situated between Stirling Road and Commonwealth Avenue. At that point of time, Razak was at a (now defunct) pub

called Raagawoods, which was then in the vicinity of Tanglin Road. Razak was celebrating his birthday at the pub with the accused and several others.

6 After ending the call with the deceased, Razak conveyed her message to the accused. At the accused's request, Razak drove him to Commonwealth Avenue where the accused alighted at the bus-stop in front of Block 27A, which is directly across the road from Block 181 and next to Queenstown MRT station. Razak then returned to the pub.

7 When the accused alighted, he did not see the deceased. He then walked across an overhead bridge to the other side of the road where he saw the deceased sitting at the bus stop in front of Block 181, drunk and wearing a black bare-back sleeveless blouse. There was also an empty bottle of beer next to her.

8 Upon seeing the deceased in that state, the accused became angry and assaulted her repeatedly. He then dragged her to the lift lobby of Block 181 which had two lifts, A and B. When the door of lift A opened, he pulled her inside and pressed the button for the 13th floor, which was the highest floor in that block. The accused continued to hit her in the lift, at the same time scolding her for getting so drunk. He also blamed her for not taking time to care for their children and choosing to spend her time drinking with her friends instead.

9 When the lift reached the 13th floor, the accused pulled the deceased to the corridor outside the first unit from the lift. He continued to assault and scold her. The accused was so "fed up" with the deceased, especially with her drinking problem, that he carried her body and somehow pushed or threw her over the parapet wall.

Prosecution's Witnesses

10 The Prosecution called many witnesses at the trial to provide critical evidence as to what really took place on 1 July 2007. The evidence adduced can be summarised in the following manner.

The autopsy findings

11 The autopsy on the deceased was performed by Senior Consultant Forensic Pathologist Associate Professor Gilbert Lau ("Professor Lau") of the Centre for Forensic Medicine of the Health Sciences Authority ("HSA"). In Professor Lau's report, the cause of death was recorded as "multiple injuries". Professor Lau found the following injuries (amongst others):

Skull	A fracture of the left ala nasi; no cranial, zygomatic or maxillary or mandibular fractures were found.
Mouth	multiple, deep, haemorrhagic lacerations of the gingival mucosa (inner aspect) of the upper lip and, to a lesser extent, of the lower lip, associated with complete disruption of the frenulum and dislodgement of the right upper central incisor; the anterior part of the tongue was also deeply lacerated.
Musculoskeletal	

System an oblique fracture of the sternum; multiple rib fractures; an oblique, fracture-dislocation of the thoracic spine; a fracture of the left sacral wing; a fracture of the body of the left pubis; a fracture of the right superior pubic ramus; fractures of the medial thirds of both clavicles; a spiral, mid-shaft fracture of the right humerus; an open fracture of the right olecranon process; an open fracture of the medial epicondyle of the left humerus; fractures of the right tibia and fibula; an open spiral, mid-shaft fracture of the left femur.

12 Based on the injuries found on the deceased, Professor Lau concluded that death was "predominantly due to multiple injuries consistent with a fall from a height". In addition, Professor Lau noted that there were marked bruising and swelling on the face, which was evidence of significant blunt force trauma. At the trial, Professor Lau reiterated his view that the facial injuries were most likely inflicted before the deceased fell.[note: 1] Professor Lau was of the view that in line with blunt force trauma, "considerable force" was also applied to the facial injuries since the left nasal bone was fractured as a result.[note: 2] On cross examination, Professor Lau also testified that considering the amount of blood loss, it was unlikely that the deceased would have had the strength to pull herself over the parapet railing to commit suicide:

Q: Now, we knew she had tried to commit suicide from the 13th floor before.

A: Okay.

Q: So could she have done that?

A: The possibility exists, mere possibility.

Q: Why do you say "mere possibility"? Assuming if she wanted to commit suicide ---

A: Yes, but, er ---

Q: ---and she decided to commit suicide there---

A: After being bashed up, as you put it, and bashed to such an extent that she bled so profusely that she would have been very considerably weakened, one would wonder whether she would have been in a state to commit suicide.

Toxicology Report

13 The deceased also underwent a toxicology examination performed by Dr Danny Lo Siaw Teck of the Centre for Forensic Sciences of HSA. There was nothing remarkable as the tests showed negative results for chemical and drug consumption. However, there were 177mg/100ml of ethanol in the sample of blood (oxalated) and 236 mg/100 ml of ethanol in the sample of vitreous humour (i.e. liquid in the pupils). The reading from the vitreous humour was higher than that found in the blood because the latter is subject to alcohol elimination through metabolism whereas the former is not[note: 3]. Since the degree of alcohol intoxication of a person is gauged by the degree of ethanol found in the blood, the findings were consistent with the fact that the deceased had been drinking alcohol prior to her death.

Relationship between the accused and the deceased

14 As mentioned above, the accused and the deceased married in 2002 and thereafter, the deceased suffered years of abuse[note: 4] culminating in her obtaining a personal protection order ("PPO) against him on 4 April 2006. After the PPO was obtained, the accused was often arrested for breach of the PPO and the deceased called the police whenever their quarrels escalated. On no less than four occasions, the deceased called for police assistance, alleging abuse and threats by the accused.[note: 5]

15 As several witnesses testified, the couple had a lot of marital problems. From the start, there were tensions because the deceased was Muslim and the accused was Hindu. There was therefore some pressure on the accused to convert to Islam.[note: 6] Thereafter, throughout the marriage, the deceased's night shift at work[note: 7] and her drinking habit were a constant source of quarrels. They also had disagreements over how their children should be taken care of. Their relationship further deteriorated when, in early 2006, the deceased caught the accused sleeping in bed with a girl named Rita in their matrimonial flat when she returned home early after her night shift.[note: 8] In turn, the accused was also unhappy with the deceased for leaving home to stay with another man, one Manimaran s/o Arugulavan ("Manimaran"). The deceased would also often taunt the accused with SMS messages stating that she was with someone else who was, unlike the accused, a gentleman.[note: 9] At one point of time, to avoid confrontation, the accused also moved out of the matrimonial flat to stay in a rented room.[note: 10] This series of events created a lot of distrust and suspicion between the deceased and the accused.

16 As a result, the accused also had a falling out with the deceased's sister, believing that the latter had visited a *bomoh* who cast a spell on the deceased, resulting in the deceased's behaviour. The accused also believed that the sister had caused a spell to be cast on him causing him to "hear voices" and to get angry easily.[note: 11] Thereafter, to counter the situation, the accused also consulted several *bomohs* both in Singapore and abroad in an attempt to remove the alleged spells cast on him and his family.[note: 12]

17 Due to their strained relationship, the deceased was admitted into the Institute of Mental Health twice and was diagnosed with adjustment disorder and stress.[note: 13] She was released when she was assessed not to be suicidal. Although the deceased had on occasions told her friends that she wanted to commit suicide[note: 14], her ex-boyfriend, Govindarajoo s/o Ramu ("Govindarajoo"), who had cohabited with her before, testified in court that he did not think that the deceased was suicidal. The deceased was, in his opinion, someone who would talk about committing suicide but was essentially a person who wanted to move on in life and not quit.[note: 15]

18 The deceased had also intermittently terminated several pregnancies.[note: 16] In March 2007, the deceased started divorce proceedings against the accused and in June 2007, obtained an interim judgment for divorce.

Events before and after the death of the deceased

19 At the trial, Razak testified that he was the only person at the party who did not drink alcohol and was therefore the only person in their group who was sober. He testified that the accused drank a variety of alcoholic drinks (about 10 glasses[note: 17]) that night and he appeared a "little drunk"

but was unable to conclude on his state of drunkenness.[note: 18] However, on cross-examination, Razak agreed that the accused consumed a lot of alcohol[note: 19] but he appeared "steady" when compared to Steven (another friend at the pub) who was "completely gone". In this regard, the accused himself testified that he had about 12 to 13 glasses of whisky and also some other alcoholic drinks.[note: 20] The accused also said that each glass was about 10 cm high and the whisky when mixed with ice and other mixtures such as soft drinks came up to about 7 to 8cm.[note: 21] Razak also testified that each time the accused poured himself a drink, it would be up to "1½ to 2 inches", and this was about "slightly more than half" of a whisky glass.[note: 22]

20 The deceased fell from the common corridor of the 13th floor of Block 181. The first unit along the common corridor of the 13th floor belonged to one Nancy Loh, who testified that she heard loud groaning and banging noises outside her flat that morning but was too afraid to open the door to find out what was going on. She was scared and reported what she had heard to the police. Similarly, another witness, Hamzah Bin Rasip, who was standing on the ground near Block 181, testified that he heard loud banging noises coming from the block.

21 When the deceased fell from the 13th floor of Block 181, there were two other witnesses in the vicinity – both were SBS bus drivers who were waiting at the bus stop in front of Block 181 for company transport to report for work. Both testified that they had earlier heard sounds of 'crying' coming from Block 181. Goh Ngern Hoe, one of the bus drivers, testified that he heard a loud sound coming from the void deck of Block 181 and, upon turning to look, saw a body lying on the pavement of Block 181.

22 The two bus drivers saw a man who looked like an Indian, having curly hair and a thick moustache (the accused used to sport a thick moustache but had a clean shaven face during the trial), at the staircase landing leading to the ground floor of Block 181. When the man reached the ground floor, he looked to his right in the direction of the deceased's body and upon seeing the two bus drivers at the bus stop turned to his left and walked away towards the rear of Block 181. Goh Chin Hock, the other bus driver, later identified the accused in court as the man they saw that early morning.[note: 23]

23 Sometime later that morning at about 4.41am, Razak received another call from the accused asking Razak to pick him up from the Queenstown Sports Complex along Stirling Road. Razak went with one Pannirselvam s/o Anthonisamy ("Pannirselvam", also known as "Appu") to pick the accused up. In the car on the journey home, the accused, blabbering in a drunken state, mentioned the Malay word 'ajar' which means 'teach'[note: 24]. Razak sent the accused to his home in Jurong West. During the journey, the accused appeared drunk, was retching[note: 25] and wanted to vomit. Razak therefore stopped the car to allow the accused to vomit at the side of the road.[note: 26] Razak also noted that the accused stumbled a little while getting out of the car to walk home[note: 27]. After dropping the accused off, Razak left.

24 In the afternoon of 1 July 2007, Razak called the accused to tell him that the police was looking for him. The accused then arranged to meet Razak and Pannirselvam.

25 When they met, the accused told them what had happened the night before. The accused tried to explain that he had hit the deceased because she spoke to him arrogantly[note: 28]. Razak could not confirm whether the accused told him that he "threw her down" or whether the accused "let go

of her grip"[note: 29]. Pannirselvam gave oral evidence which was inconsistent with his recorded police statement. In particular, Pannirselvam said in court that the accused had told him that the deceased was "on the parapet wall" and the accused "was holding on to her legs" but when the accused tried to pull her back", he had "no strength"[note: 30]. Pannirselvam's recorded statement (P338), on the other hand, stated that the accused told him that "he threw her down the block" and that "he threw the legs over the parapet"[note: 31]. Pannirselvam explained that he was told by the police to sign his statement despite the inaccuracies as he could still "go to court to tell the truth".

26 The prosecution thereafter applied under s 147(3) of the Evidence Act (Cap 97, 1997 Rev Ed), to substitute Pannirselvam's oral evidence with his recorded statement (P338). I allowed the application as I could not accept Pannirselvam's explanation for signing his statement.

27 The accused also told Razak that he would first make arrangements for the care of his children and then surrender to the police.[note: 32] When a van appeared at the meeting place, the accused thought that it was the police and walked quickly away with one of his children. However, it turned out that the van was not a police vehicle. The accused finally surrendered himself to the police two days later on 3 July 2007 at about 9.40 am.

Crime scene & forensic evidence

28 As the police processed the crime scene, they found blood stains at the bus stop in front of Block 181, a blood trail along the path from the bus stop to the lift lobby of the block and many blood stains in one of the two lifts of Block 181 and along the common corridor of the 13th floor. The police also found traces of blood on the floor of the staircase between the 13th floor and the 12th floor and between the 2nd floor and the ground floor. There were also other bloodstains on the ground floor, leading to the rear of the block. Bloodstained shoeprints were also found at the scene. Significantly, at the bus stop in front of Block 181, the police also found a tooth which was subsequently sent for post-mortem dental examination and found to be the deceased's. Subsequently, the police also found more bloodstains in Razak's car although it had been washed in the morning of 1 July 2007. The car was later seized and examined.

Forensic findings in respect of the bloodstains

29 The bloodstains were examined by Dr Tay Ming Kiong, Consultant Forensic Scientist of the HSA ("Dr Tay"). Dr Tay found that the bloodstains in Razak's car belonged to the deceased. Dr Tay further found that the deceased was "dripping blood" when she was moving from the bus stop to the lift lobby of Block 181. The bloodstains on the lift door were also caused by impact, which Dr Tay opined could be due to punching, slapping or kicking.[note: 33] The bloodstains in the lift were also low lying, suggesting that the deceased did not walk into the lift but was dragged in.[note: 34] This was consistent with the findings of Kuah Kim Lian, another forensic scientist with the HSA, who found that the tears on the deceased's trousers were the result of "pulling and stretching forces exerted on the trousers' fabrics"[note: 35].

30 Dr Tay also testified that the heavy bloodstains on the corridor floor on the 13th floor indicated that the deceased was there for some time. Strands of long hair were also pulled out and deposited on both the metal railing on the parapet wall and on the corridor floor. Dr Tay was of the view that since the hair was matted and soaked with blood, it was likely that the head from which it came was bleeding[note: 36].

31 Significantly, Dr Tay found that "for some time, the victim's bleeding wounds were positioned over the parapet wall, dripping blood onto the storeys below". Dr Tay clarified in court that given the vertical flow patterns of the blood, this meant that an object (or person) was "stationed" for "some time" over the metal railing.[note: 37] In other words, the assailant had used the railing as a pivot to support the deceased's body and thereafter, additional force was applied for the entire body to go over the wall.[note: 38] When pressed to clarify what he meant by "some time", Dr Tay opined that it was difficult to gauge but given the drip patterns, it was definitely not something "momentary"[note: 39] and was at least several seconds long[note: 40].

32 Upon cross examination, Dr Tay was open to the suggestion that the deceased could have fallen down on her own in that position or that somebody could have pushed her down:[note: 41]

Q: So she would be positioned on the parapet wall.

A: Yes.

Q: Okay. That's---that's what I wanted to know, okay. Now, when she was positioned in this---then she could have fallen down.

A: Mm.

Q: Either on her own or somebody pushed her.

A: Yes.

33 The Defence also suggested that the deceased could have killed herself, to which Dr Tay opined that it was possible but an unlikely event since there were no bloody palm prints found on the parapet railing[note: 42]:

Q: Now, could she have killed herself that day? Because when she was in that position, could she have jumped off?

A: Then she must get over this, er, barrier that was the parapet wall—

Q: That's right.

…

Q: No, could she have pushed herself up? You know---

A: Her height was, I understand, about just---how---how much was her height?

Q: Doesn't matter, you can push yourself up.

Court: 1.61

Witness: 1.61?

Court: But her heels were 7.5 cm.

Witness: Yes

A: But her centre of gravity would be about, er, 0.55 of her height. That means about---probably about 0.8 something metres, so she still would need to lift herself up, er---

Q: Yes, lift herself up.

A: ---quite a distance.

Q: She could lift herself up, why not?

A: But there were no, er, bloody palm prints on that, er---

Q No, no, I'm---

A: –Railing

Q She could have gone up and then—

A: She would need, er, something, er, to lift herself up.

34 Dr Tay also observed that the flowerpots aligned along the parapet wall were undisturbed and while there were bloodstains on the leaves of the plants, the flowerpots did not appear to have been moved. It was therefore unlikely that the deceased had used the flowerpots to pull herself over the parapet wall:

Q: Now we move back to P33. Dr Tay, you gave evidence in Court that you saw that the pots were upright and no soil was dislodged from the pot. What do you make out of that?

A: Er, your Honour, I can make out that these pots were largely undisturbed. I saw two bloodstains on---on two leaves on the---on the plants and that was all. And the smudges were located some distance from the pots, the smears.

Q: And are there any stains on the flowerpot? Maybe David can show that area.

A: Er no, your Honour, I did not see any stains on the---on the---on the pots. The rims, as you can see, are very clean, the upper rims. There was a part of the pot that broke but at the scene, er, I did not see this part on the floor. That means, er, this part broke some time before. This broken part was not observed at the scene.[note: 43]

…

Q: I'll show you a photograph that you covered with us earlier, P33. A few photographs on---I'm showing the undisturbed flower pot soil. And---and a photo earlier, P32 which is a general scene to put the bloodstain in perspective. P32.

A: Yes, your Honour. This photo shows that the heavy bloodstains were located some distance from the potted plants. In my opinion, er, it would be highly unlikely for her to have tried to lift herself up if that is one scenario that you're---the---you're considering, to lift herself up by standing on the flower pot and getting over the railing. Because that will most certainly tip over the---the potted plant. And also the time that she were to spend trying to get over the railing at that point would cause substantial amount of blood on the floor next to the potted plaints, which is not the case here.[note: 44]

35 The close proximity between the deceased's body on the ground and the edge of the block (about 90 cm) suggested that the deceased had fallen without much of a "horizontal projection". Any "horizontal projection", in Dr Tay's view, would have translated into a greater distance between the body and the edge of the block.

Q: …Now there's a distance of 90 centimetres, P21, P21. This distance of 90 centimetres, Dr Tay, can you tell us more about this?

A: Yes, your Honour. This distance was---I will say was a very short distance from the edge of the building. And it's very consistent with the fact that her body brushed against the exterior of the parapet wall on the 13th storey. So she practically just---just went over the railing and then fell down without much of a horizontal projection away from the building. Because of the height that she fell from, any initial horizontal velocity imparted to her on the 13th storey would translate into a fairly large distance on her reaching the ground. So one can tell, er, there was a very minimal horizontal velocity in her motion from the parapet, er, of the 13th storey.

36 Dr Tay was also able to trace the path taken by the assailant. In his expert opinion, this was what happened. First, the assailant walked from the 13th floor "towards the staircase and descended to the 12th storey lift lobby; the right hand with wet blood held the hand-rails and deposited bloodstains on them". The assailant then "pressed the button of Lift B to descent" but "turned around when Lift A arrived first instead". Thereafter, the assailant exited from the lift at the 2nd floor and descended via the staircase to the ground floor. The assailant then walked to the rear of Block 181, "leaving increasingly faint bloody shoeprints on the floor".

37 The police took swabs of bloodstains from the crime scene for DNA analysis. The bloodstains found at the scene largely belonged to the deceased. Significantly, a swab collected from a bloodstain beside the lift button of lift B on the 12th floor of Block 181 returned positive results for both the deceased's and the accused's DNA.[note: 45] Similarly, another swab collected from a bloodstain on the left lift wall of lift A also turned up positive results for the accused's DNA.[note: 46] The police also found a cigarette butt at the bus stop in front of Block 181. The cigarette butt was

tested and it turned up an unknown male's DNA, i.e. not belonging to the deceased or to the accused. A swab collected from a bloodstain on the staircase between the second floor and the ground floor of Block 181 tested positive for the DNA of the deceased and an unknown female.

38 These swab tests were performed by Ang Hwee Cheng ("Ang"), Forensic Scientist with the DNA profiling laboratory of the HSA. Ang testified that all unknown profiles would be searched against the national database of DNA profiles, which included the DNA profiles of offenders from February 2003 onwards.[note: 47] This national database for DNA was called Combined DNA Identification System or CODIS, for short. In this regard, Tan Pang Tiong, the Head of Criminal Records at the Criminal Investigation Department testified that the DNA profile of Manimaran – the man the deceased lived with briefly – was convicted of theft and his DNA sample was taken and stored in CODIS on 19th May 2005.[note: 48]

39 Ang explained that DNA can be deposited by many means, for example by merely touching a lift button[note: 49] but this would ultimately be dependent on the individual – how good he or she was as a "shredder" of DNA. In this regard, Ang confirmed that the results of the DNA tests were highly dependable because "it's not possible to find the same DNA profile in the whole population".[note: 50] In other words, Manimaran's DNA was tested and his was not one of the unknown DNAs found at the scene. Similarly, the DNA results showed conclusively that the accused was in lift A of Block 181 with the deceased on 1 July 2007.

Forensic Odontology Report

40 The post-mortem dental examination was performed by Dr Tan Peng Hui ("Dr Tan"), Consultant Forensic Odontologist with the Centre for Forensic Medicine of the HSA. Dr Tan found that a tooth was missing from the deceased's upper jaw. Upon examining the tooth found at the bus stop, Dr Tan compared it with the missing socket and found that it fit 'snugly' into the empty tooth socket. This meant that the tooth found belonged to the deceased.

41 Dr Tan also found that the "presence of the socket and associated soft tissue injury suggested that the tooth loss was most likely *peri-mortem*." In other words, the tooth was missing *before* the deceased died. Although Dr Tan agreed upon cross examination that without the knowledge of the deceased's dentistry before she fell, it was possible that the soft tissue injury was caused by the fall, he felt that the collective evidence suggested that it was more likely due to a *peri mortem* injury than to the fatal fall[note: 51]:

> Q: That's right. So if she had fallen down and you don't know the state of her – of her dentistry before she died, right, if the state of her dentistry meant that that part could have been a very weak part of her body, it could have---she could have injured herself by falling down?
>
> A: Yes.
>
> Q: That's right. That's what I wanted to hear.
>
> A: But—but the associated soft tissue injury on the upper lip and tooth number 17 and tooth 41 collectively suggested an injury more than a fall.

Q: Okay. But assuming her—the—tooth had come out first—okay, let's say she fell down and the tooth came out first, then the other injuries could have been caused in the fall when she fell down from the height.

A: No, because the other injury would have been mar—far more severe if it had been from a fall.

Q: Okay. You tell me---okay.

A: Yah.

Q: She will—if—the tooth was found close to where she had fallen down, would you have been satisfied that it was caused by the fall?

A: It—it—it could be.

42 Dr Tan opined that a "blow to the mouth was the probable cause" of the tooth loss. Dr Tan also found that the deceased had sustained fractures of some other teeth, which were "consistent with trauma sustained by the right side of the jaws".

Forensic evidence in respect of fingerprints and shoeprints

43 Mohd Yazid Bin Abdullah, a fingerprint expert, analysed four latent prints which were lifted at the crime scene. He was of the view that latent print CID/SC/381/07 'D' (P342) matched the "left middle fingerprint impression" of the accused. This latent print was lifted from the top of the parapet wall.

44 Although the police did not recover the clothes and shoes worn by the accused on 1 July 2007 (as he had discarded them at a bus-stop near his home), the police seized a pair of light yellowish green 'US Star' shoes from the accused's flat. The pair of shoes seized was matched against the shoe prints found at the crime scene by forensic scientist Chow Yuen San Vicky. She was of the view that the repeated diamond pattern from the shoes did not match three of the shoe prints at the scene. ("Meera-63 to 65") (P311 to P313). However, the shoe prints were left by shoes of a similar size and design as those of the pair seized.

Statements by the accused

45 After the accused surrendered himself to the police, he made several statements pursuant to the Criminal Procedure Code (Cap 68, 1985 Revised Edition). During the trial, the prosecution sought to admit these statements but the defence objected as to their admissibility. As a result of this, a trial-within-a-trial was carried out to determine their admissibility.

Trial-within-a-Trial

46 The accused challenged the following statements:

(a) s 122(6) statement recorded by ASP Ang Bee Chin ("ASP Ang") dated 3 July 2007 ("1st disputed statement" or "s 122(6) statement")

(b) s 121 statements recorded by ASP Cindy New Lay Peng ("ASP New") on the following dates:

4 July 2007 ("2nd disputed statement")

5 July 2007 ("3r d disputed statement")

6 July 2007 ("4th disputed statement")

8 July 2007 ("5th disputed statement")

9 July 2007 ("6th disputed statement")

10 July 2007 ("7th disputed statement")

Collectively, the "s 121 statements"

(c) Field Investigation Diary, belonging to ASP New, which particularised the details of a scene visit on 10 July 2007 ("Field Investigation Diary")

47 It is trite law that the prosecution must prove beyond a reasonable doubt that an accused's statement was voluntarily made. The court has to take a global approach, considering all circumstances and all that the defence has to do is raise the issue of any misconduct under which the statement was procured. If the statement is found to have been made involuntarily, then it would not be admissible. As stated by the Court of Appeal in *Zailani bin Ahmad v Public Prosecutor* [2005] 1 SLR 356 ("*Zailani bin Ahmad*"):

> 42 In our opinion, the entire trial within a trial is to be regarded as a composite whole. In exercising his functions as judge and jury, the trial judge should take a global approach and arrive at his conclusion as to whether the Prosecution had indeed proved its case beyond reasonable doubt and not ask himself the question of whether the accused had raised any doubt in the Prosecution's case.
>
> 43 In our view, the only requirement, if any, on the Defence is to raise an issue and bring to light the alleged offending conduct of the recording officers as well as the circumstances under which the statement was given, and if the circumstances outlined appeared to give rise to an inference or a nagging suspicion that the statement was tainted by any of the vitiating factors, then the statement must be held to be inadmissible.

48 The test of voluntariness is both an objective and subjective determination. This was succinctly summarised in *Public Prosecutor v Lim Thian Lai* [2005] SGHC 122 at [32]:

> It is also settled law that the test of voluntariness comprises elements of both objectivity and subjectivity. An actual threat, inducement or promise must be found to factually exist. Having established that, the facts must be carefully scrutinised to determine whether the threat,

inducement or promise operated on the mind of the accused during the material period, inspiring either the hope of escape (whether partial or full) or fear of punishment in relation to the actual or prospective charge; see Chai Chien Wei Kelvin v PP [1999] 1 SLR 25; Sharom bin Ahmad v PP [2000] 3 SLR 565. In the final analysis, the court will review all the circumstances of the case in determining whether there were any reasonable grounds for the accused to assume that he would receive any benefit or avoid any punishment: see Tan Boon Tat v PP [1992] 2 SLR 1. If a threat or inducement is indeed found to have been made, then the prosecution must prove beyond any reasonable doubt that the original threat or inducement had effectively dissipated when the statement(s) in question were made: see Lim Sing Hiaw v PP [1965] 1 MLJ 85. It is not incumbent on the prosecution, however, to prove that there is no lurking shadow of doubt or minute vestiges of fear in the mind of the accused before a statement is recorded: Panya Martmontree at 349 and see s 24 of the Evidence Act (Cap 97, 1997 Rev Ed).

(i) Section 122(6) Statement

49 The first disputed statement was recorded by ASP Ang. The statement was challenged on two main grounds. Firstly, it was alleged that the temperature in the interview rooms was too cold when the accused made his statement. The accused had an asthmatic condition but ASP Ang was unaware of this at that point of time. The defence claimed that the accused, who was merely wearing shorts and a polo-shirt when he made his statements, was adversely affected by the room temperature. In this regard, the accused himself testified that both ASP Ang and the interpreter were wearing long pants and a Punjabi suit respectively.[note: 52] As a result of his asthmatic condition, the accused claimed that he was labouring under the fear of an asthmatic attack while he gave his statements.[note: 53] Secondly, the defence also claimed that ASP Ang had already formed an impression of the alleged offence[note: 54] and when the accused paused, ASP Ang then prompted the accused to "try to remember".[note: 55]

50 ASP Ang could not remember what she had said but conceded that maybe "once or twice" she would say "try to remember"[note: 56]. On re-examination, ASP Ang clarified that what she meant was that she might have told the accused to "try to remember about what happened"[note: 57].ASP Ang also explained that when she recorded the statement from the accused, she did not know the facts of the case and therefore did not ask specific questions such as "did such and such a thing happen?"[note: 58]. The accused explained that he followed the alleged prompting because "they knew better about this case"[note: 59] and this was because "they are police". For the above two reasons, the defence argued that the accused felt extreme discomfort from the cold and when asked to sign his prompted statement, he just signed it.[note: 60] It was therefore not voluntary.

(ii) S 121 Statements

51 The s 121 statements were challenged by the defence on similar grounds[note: 61] as the first disputed statement (i.e. the s 122(6) statement). These objections applied to all the s 121 statements and I will therefore deal with them together. The s 121 statements were taken by ASP New and not ASP Ang.

52 Firstly, the defence claimed that the accused was feeling very cold when he was giving his s 121 statements and this was made worse by his asthmatic condition. Therefore, these statements were involuntary. [note: 62] However, ASP New testified that she was unaware of the accused's asthmatic condition. Secondly, the defence claimed that because the accused suffered from cervical

spondylitis, the accused was very co-operative as he was feeling pain and simply wanted the recording of the statements to end. Spondylitis is a chronic degenerative change of the accused's cervical spine due to wear and tear.[note: 63] Like the accused's asthmatic condition, ASP New was unaware of this and only found out about it during the trial.[note: 64]

53 As a result of the cold, his asthmatic condition and spondylitis, the accused claimed that he was unable to sleep well at night and the s 121 statements were not voluntary as he was not able to concentrate.[note: 65]

54 Those were the general challenges mounted by the defence which were common to all statements. I will now set out the specific challenges which were made against the respective s 121 statements.

(a) Second Disputed Statement – 4 July 2007

55 The second disputed statement was specifically challenged on the grounds that the statement was not read back to the accused.[note: 66] Further, the defence also argued that there was no warning administered under s 121 of the CPC.[note: 67] In particular, the defence argued that ASP New was aware of the facts of the case and therefore suggested known facts to the accused which eventually went into the statement.[note: 68]

(b) Fourth Disputed Statement – 6 July 2007

56 The defence challenged this statement on the ground that since the third disputed statement was in soft-copy, it was a mere template and ASP New did not read the warning to the accused.[note: 69] In addition, the defence also alleged that the interpreter read only parts of the statement back to the accused.[note: 70]

(c) Sixth Disputed Statement – 9 July 2007

57 The Defence challenged this statement on the basis that the accused could not have changed the words "we had an argument" to "we had a misunderstanding". The relevant part of the statement reads:

> We reached home at about 4am that day. Less than an hour, we had ~~an argument~~ a misunderstanding while at home and I chased Meera out of the house. After she left, I do not feel good and went to look for her. She was resting at the void deck of HDB block and I knew that she went to stay with her sister after that. To what I know, Meera went back to stay with Mani sometime later.

This change, the defence claimed, was a tactic used by the police to create the impression that the accused was alert and was making changes as he read through his statement when the accused was in reality extremely uncomfortable and cold.[note: 71] The accused testified that he saw no difference between the two words "argument" and "misunderstanding".[note: 72]

(d) Seventh Disputed Statement – 10 July 2007

58 The defence challenged the admissibility of this statement because ASP New admitted that she did not ask the interpreter to read back the previous statements to the accused before proceeding to

take his statement on 10 July 2007.[note: 73] In addition, the defence claimed that the warning in s 121 was similarly not read to the accused.[note: 74] The accused also claimed that he was expecting to see his children when he gave this statement and this was why he was all the more cooperative when recording the statement.[note: 75]

Entries in the Field Diary

59 ASP New also brought the accused on a crime scene visit to Block 181 on 10 July 2007 and noted her findings in her Field Diary. Although ASP New testified that she recorded whatever the accused said contemporaneously, the defence claimed that it was not logical for the accused to come out of the lift and claim that the place was not familiar, only to state that it was familiar moments later. I reproduce the relevant parts of the field diary below:

> 1130 At 13th storey, through Ravi, the accused informed that the place seemed new to him. *It was not familiar to him. The accused then led us to the corridor where he said that the place is familiar*. He was asked why was it familiar and he replied that he cannot tell why. He just know that it was there. He remembered seeing the window. The accused then pointed to the place along the corridor in which he scolded and slapped the deceased. The accused informed that he made Meera sit, leaning against the parapet wall. He scolded and slapped her. Her legs were bent. Her head slidded to the ground, nearer to the lift. The accused was angrier seeing that and he picked the deceased up and threw her over the parapet.
>
> (emphasis added)

This, the defence argued, suggested that the police had recorded the second statement ("*the accused then led us to the corridor where he said that the place is familiar*") because they knew that the first statement ("*it was not familiar to him*") showed that the accused could not remember the crime scene and was therefore detrimental to their case. At trial, the accused testified that he never claimed that the place was familiar to him and maintained that the surroundings of Block 181 were hazy when they went on the scene visit.[note: 76]

60 The defence also claimed that the accused was weak-willed and upset during the field trip. This again was because he did not sleep well at night as he was cold and was experiencing a lot of neck pain. Given that the investigation officers already had a preconceived notion of the facts in this case, the field trip was an academic exercise whereby the accused merely replied in the positive to promptings by the police on what had happened in their view.[note: 77]

Decision of the court in the trial-within-a-trial

61 After hearing the submissions from both parties, I found that the prosecution had proved beyond a reasonable doubt that the statements were obtained voluntarily from the accused. I now set out my reasons below.

62 The defence referred to the case of *Public Prosecutor v L Hassan & 2 Ors* [1988] SGHC 357 ("*L Hassan*") as showing facts analogous to the present case. In L *Hassan*, although the defence claimed that the second accused was put through cold air-conditioner treatment (as the defence here did), Rubin J in finding that the statements recorded from the second accused were inadmissible, did not place much weight on this. Instead, the statements were inadmissible because the

investigating staff sergeant had told the second accused that the first accused had named him as an accomplice and that the second accused should therefore agree with it.

63 While the defence claimed that the statements in this case were made under heavy prompting, there was no evidence to suggest this. In fact, the interpreter testified that ASP Ang provided no prompting at all times[note: 78]:

Q: Okay, But what he told us also is that because he was unable to remember –

A: Mm-hm

Q: -- the suggestions came from ASP Ang and of course you interpreted to him, you know—

A: I –

Q: -- and she knew the facts of the case, you see.

A: Mm-hm.

Q: I mean being a recording officer you know the facts of the case. And then you interpreted her suggestions to him.

A: No, Sir. No, Sir. She did not prompt in any way.

Q: Yes.

A. No.

Q. Did not prompt.

64 While ASP Ang may have asked the accused to "try to remember about what happened", I did not think that this alone could by any measure result in any form of inducement or oppression. Most importantly, the police statements and the field investigation diary contained details which only the accused knew and therefore could not have been suggested by anyone. In particular, in the s 121 statement recorded on the 4 July 2007, the accused stated that he had "used [his] fist and boxed against the lift wall as [he] was frustrated to see her [i.e. the deceased] in [that] state". A blood swab was collected from the lift wall of lift A at Block 181 and this swab matched the DNA of the accused. However, the laboratory report was only made available some *two* months *after* the recording of that statement. In other words, there was no way ASP New could have known of this DNA match at the time of recording to have suggested such details to the accused. Looking at all the statements as a whole, they contained detailed accounts of the incident that night and I was satisfied that the statements and the field investigation entries were not obtained by suggestions but were true accounts of the events.

65 The Defence also relied on [77] of L *Hassan*, which spelt out the grounds on which Rubin J rejected the statements from the third accused in that case. Notably, the third accused was subjected to long periods of interrogation without rest. The third accused in L *Hassan* was arrested at

about 11.20pm on 6 January 1997 and was thereafter not allowed proper rest until 1.45 pm the next day save for a short respite between 6.05 am and 8.10 am and between 9.40 am and 10.50 am on 7 January 1997. However, the facts of the present case are vastly different. The accused here was not sleep-deprived at all. Indeed, most of the statements in the present case were recorded in half a day and the accused had ample breaks in between for lunch. The case of L *Hassan* was therefore clearly inapplicable.

66 The accused may have had complaints about the room temperature but ASP Ang confirmed that while the accused was not given any hot drinks in the course of recording his s 122(6) statement,[note: 79] she only commenced recording the statement after the accused had taken his dinner. The accused would have been given a packet of food and a *hot drink* for dinner.[note: 80] ASP Ang also testified that she did not see the accused shivering.[note: 81]

67 With respect to the s 121 statements, ASP New also testified that the accused did not complain to her about anything during the recording of his statements and that the accused was instead very forthcoming in giving his statements.[note: 82] I found no reason to doubt the credibility of ASP New's testimony. Although ASP New did not know that the accused had asthma, she did ask him if he was feeling well before proceeding to take his statements.[note: 83] Moreover, as ASP New confirmed in her testimony, the temperature in the interview rooms was 26 degrees Celsius and this was centrally controlled[note: 84] for *both* the lock-up rooms and the interview rooms[note: 85]. The temperature of these rooms was therefore not deliberately reduced to create any form of oppression.

68 While reaction to cold would vary from person to person, the accused had access to hot water. His request for blankets was turned down only for safety reasons. Indeed, when the accused asked for a blanket, the station sergeant checked with the accused if he had a fever and he did not have one.[note: 86] The accused's request for a blanket was not acceded to only because he was considered a "high risk accused" and a blanket was not allowed to be issued to him for fear that he might use it to commit suicide.[note: 87]

69 As for the accused's neck pain (the condition of spondylitis), ASP New confirmed that the accused had at all times access to a doctor. The accused had on five occasions between 4 July and 9 July[note: 88] refused to take paracetamol for his pain. Paracetamol was prescribed to him by the doctor for the pain experienced as a result of spondylitis but the accused refused to take it because he felt that it would be ineffective. While the accused may feel that paracetamol would be ineffective, I was not in a position to disagree with the diagnosis of a doctor who had seen the patient.

70 During the course of the trial, the accused also complained of neck pain and I directed ASP New to inform Queenstown Remand Prison to ensure that he receive medical attention.[note: 89] The accused was subsequently given a neck brace to wear during the trial and he did put it on whenever he wanted to.

71 On the evidence, I rejected the accused's allegations that his statements were not voluntary because he was weak-willed or upset during the recording of the various statements as a result of feeling cold the night before or of lack of sleep or as a result of his neck pain.

72 On the issue of tampering and coercion, I did not believe the assertion that the 6th disputed statement was tampered with by the police in the sense that the word 'argument' was changed to

'misunderstanding' to create the impression that the accused was alert during the course of taking his statements. There was simply no evidence to support such an allegation. Similarly, there was also no evidence to suggest that the police had coerced or even induced the accused to give answers during the scene visit.

73 With respect to the alleged absence of a caution before the recording, it is trite law that this in itself does not prevent a statement from being admitted into evidence. As stated by the Court of Appeal in *Public Prosecutor v Mazlan bin Maidun and Anor* [1993] 1 SLR 512 at [37]:

> [A] statement recorded from a suspect or an accused under s 121(1) and sought to be admitted in evidence under the provisions of s 122(5) may be so admitted even if no caution has been read to him in terms of s 121(2); but if, in addition to these circumstances, he was told at the time he made the statement that he was bound to state truly everything he knew concerning the case, such statement may not be admitted by reason of his having been induced to make it, within the meaning of s 122(5).

74 In essence, the "only circumstance where a statement made by an accused whether in police custody or not, may not be admitted in evidence is where it s tainted by inducement, threat or promise." (*Mohamed Bachu Miah v PP* [1993] 1 SLR 249 at [50]; *Public Prosecutor v Lim Thian Lai* [2005] SGHC 122 at [42]) Therefore, the alleged failure to read back the statements to the accused also did not affect the admissibility of the statements, so long as they were voluntarily obtained (*Public Prosecutor v Leong Siew Chor* [2006] 3 SLR 290 at [90]; *Panya Martmontree and Others v Public Prosecutor* [1995] 3 SLR 341 at [6]; and *Public Prosecutor v Vanasan Sathiadew and Others* [1989] SGHC 87 at [29]).

75 Lastly, while the accused would undoubtedly have wanted to see his children, I did not think that this constituted any inducement on the part of the police as far as the 7th disputed statement was concerned. The police did not withhold visitation rights in order to procure the statements from the accused.

76 For the above reasons, I found that the police obtained the statements and the field investigation entries without any threat, inducement or promise. I therefore admitted the s 122(6) statement, the s 121 statements and the field investigation entries at the conclusion of the trial-within-a-trial.

The Case for the Defence

77 Part of the case for the defence had initially proceeded on the grounds that the accused was not at Block 181 or in its vicinity on 1 July 2007 but that another man, Manimaran, was the one at the scene. This line of defence was however abandoned as the trial proceeded because the evidence adduced showed clearly that it was the accused and not Manimaran who was there that early morning.

78 The crux of the defence was that:

(a) The accused was by virtue of intoxication, entitled to the general defence of intoxication under s 85 and s 86 of the Penal Code.

(b) The accused was suffering from an abnormality of mind at the time of the killing and therefore entitled to the defence of diminished responsibility under Exception 7 in s 300 of the Penal Code.

(c) The accused was provoked by the actions of the deceased and therefore entitled to the defence of grave and sudden provocation under Exception 1 in s 300 of the Penal Code.

(d) The deceased committed suicide.

79 In support of the above defences, two witnesses were called, a psychiatrist and the accused himself. With respect to the accused, his evidence did not shed much light on what happened that early morning because he testified that he could not remember what happened from about 3 am on 1 July 2007 at Raagawoods to the time he woke up at about 3 pm the same day. However, he was able to testify as to his drinking habits and other background facts.

(i) Defence of Intoxication

80 Although the accused could not remember how much he drank at Raagawoods , he testified that he would usually drink once or twice a week. His drinking habit started with stout when he was 17 and he started drinking whisky only from 2006.[note: 90] When the accused drank stout, he would usually drink about one or two bottles. The accused also admitted upon cross examination that he "knew his limit" and would usually be able to hold his drinks quite well.[note: 91] The accused also testified that he would usually not mix his drinks – if he started with stout, he would continue drinking stout. Conversely, if the accused started with whisky, he would only continue drinking whisky. [note: 92] In this regard, although the accused could not remember what happened that night, he said that as far as he knew, he had only consumed whisky and not tequila. Similarly, the accused did not recall drinking a mixed alcoholic drink called Graveyard, said to be a very strong drink.

81 The accused would usually finish his drink before refilling his glass.[note: 93] In other words, the accused would refrain from refilling half-filled glasses. The accused agreed during cross examination that while he would only refill an empty glass, it was possible that his friends could have refilled his half empty glass that early morning. The accused did not pay any attention as to whether his friends did that.[note: 94]

82 The accused would usually pour half portions each of whisky and Coke into his glass. He would also add ice into the drink. Each whisky glass was about 6.5 cm in width and 10cm in height. This was done by estimation in court using a water bottle because no whisky glass was seized from Raagawoods. Neither was any bill seized to indicate how much liquor was purchased. In any case, any bill seized would indicate only the amount of alcohol purchased to be shared among the accused and Razak's friends. There would not be any indication from the bill alone how much alcohol was actually consumed by the accused himself.

83 Dr Tommy Tan Kay Seng ("Dr Tommy Tan"), a forensic psychiatrist having his own practice at Novena Medical Centre, gave evidence that based on his calculations the accused was suffering from acute alcohol intoxication that morning. Dr Tommy Tan's report on the accused person's level of intoxication is reproduced in full below:

Estimated blood alcohol concentration at time of offence

Tharema was drinking from about 1am to 4am. His own account was that he had drunk 12 to 13 "pegs" of whisky with coke. The word "peg" is a lay word which meant a pour of alcohol. There is no standard amount of a pour. However, a standard measure of liquor in any bar or pub in Singapore is 30ml. A self-pour drink can be more than 30 ml, although it could also be less, depending on the drinker and the company. According to Tharema, his one peg of his whisky is like a pour similar to "teh tarik".

In estimating blood alcohol concentration, I have used the most conservative estimates of the many variables (The only non variable is the concentration of alcohol in whisky and most liquors, which is 43%.)

Percentage of water in a male human body is usually estimated at 60% (I used 70% so that there was even more water volume to dilute the alcohol consumed.) Body metabolism of alcohol is between 10 to 20 mg/dl per hour. (I have used the higher figure.)

His weight could actually be less at the time of the alleged offence as he could [have] gained weight during his remand.

Assuming that on average one pour of whisky is 30mls.

12 pours = 360 mls of whisky

= 155 mls of alcohol (average concentration of whisky is 43% alcohol)

= 124 gms of alcohol (specify gravity of alcohol is 0.8)

= 124000 mgs of alcohol

Tharema's weight was 57 kg.

Therefore his water volume was (assuming a conservative 70% of body weight)

= 40 kg

= 40 l

= 400 dl

Blood alcohol concentration without metabolism

= Amount of alcohol/body water volume

= 124000 mgs/400 dl

=310 mgs/dl

Metabolism of alcohol is 20 mg/dl per hour.

From 1 am to time of alleged offence = 3.75 hours.

Total amount of alcohol metabolised = 3.75 x 20

= 75 mg/dl

Estimated alcohol level at time of alleged offence = 310 – 75 mg

= 235 mg/dl

At this level of blood alcohol concentration, there is slurring of speech, which would be compatible with Mr. Razak's observation that Mr. Tharema was slurring in speech.

If we assumed that he had 10 drinks, instead of 12 drinks in 3 hours, his blood alcohol concentration at the time of alleged offence would have been 183 mg/dl. At this level, his cognition and judgment would be affected and there would be motor in-coordination.

This would be compatible with his account that he thought that he was at the block of his flat. He brought his wife to the 13th floor because he was staying at the 13th floor in Jurong West.

His Judgment was very affected by the alcohol he had drunk. He had made a mistake about the block of flat. Hence it is plausible that he did not know the black object on the floor which he threw over the parapet was his wife. It is equally plausible that he could not form the intention to kill his wife.

Tharema had acute alcohol intoxication (F10.0, ICD 10; 300.00 DSMIV-TR) at the time of the alleged offence.

During cross-examination, Dr Tommy Tan conceded that his calculations were at best an estimation because intoxication was subject to many variables.

Q: Yes, and can you tell us, you know, for alcohol intoxication, whether a person is intoxicated---what are the things, what are variables, you know. How shall I put it? There are certain things that would come into play in a calculation, right?

A: Yes

Q: Like I have seen in your calculation---

A: Body weight.

Q: Body weight---

A: Amount consumed.

Q: ---metabolism rate.

A: Yes.

Q: Whether he had eaten before.

A: Yes. So it---it is, we, only at best an estimation.

84 Dr Kenneth Koh, a consultant psychiatrist in the Institute of Mental Health, Singapore, was called by the prosecution to rebut Dr Tommy Tan's expert evidence. Dr Kenneth Koh took a different view. In his report dated 21 January 2008, after interviewing both Razak and Pannirselvam, Dr Kenneth Koh took the view that the accused was intoxicated but was nonetheless still able to form the intention to murder the deceased. The report is reproduced as follows:

> Both Mr Abdul Razak and Mr Pannirselvam confirm that Mr Tharema had consumed a fair amount of alcohol in the hours preceding the alleged offence.
>
> After listening to their accounts of the behaviour of Mr Tharema just before and after the alleged act of homicide, my original opinions stated in my report to the court dated 30 July 2007 remain unchanged. I am of the further opinion that while he may have consumed alcohol just prior to the alleged offence, he was not so intoxicated as to have been unable to form intent.

85 Dr Kenneth Koh elaborated on his views while testifying in court. He explained that while the accused was intoxicated, it was not to the extent that he was unaware of his actions. To the contrary, the accused informed Dr Kenneth Koh that he did not think he was drunk at the material time because, in the accused's words, "I know my limit". In the expert's opinion, the objective facts showed that the accused's actions were very organised that early morning and they appeared to follow a fairly logical sequence with no abnormal bizarre disorganised behaviour. The accused had enough control of himself to be aware of what he was doing although the alcohol probably did disinhibit him in his control and perhaps judgment as well.

(ii) Defence of Diminished Responsibility

86 The accused testified that he suspected that black magic had been used on him and his family. The accused consulted a *bomoh* after his son suffered from constipation and after the accused was unable to perform during sexual intercourse with the deceased.[note: 95] The accused testified that the deceased was also affected by black magic because she had moved about the house in a seemingly uncaring manner and also because she started to lose weight as well. When consulted, a medical doctor did not find any problems with the deceased's health but a *bomoh* told the accused that a spell had been cast on his entire family. The accused claimed that the deceased also believed that black magic had been cast on her. It was also his belief that someone had come to his house and sprinkled something at his doorstep.[note: 96] In essence, the accused testified that he believed that unless he could find a stronger *bomoh* than the spell caster to counteract the black magic put on his family, matters would worsen for his entire family.

87 In this regard, Dr Tommy Tan was of the view that the accused was suffering from a psychiatric condition termed "delusional disorder – persecutory type" which was characterised by a belief that the deceased's sister had been using black magic to cause problems to his marriage by placing charms on him, his wife and their son. Dr Tommy Tan testified that the delusional disorder would cause the accused to make "delusional interpretations" of events which occurred around him, interpreting them as events resulting from black magic.[note: 97] Dr Tommy Tan was therefore of the view that the accused could qualify for the defence of diminished responsibility. The salient parts of Dr Tommy Tan's report are reproduced as follows:

> Diagnosis
>
> Mr Tharema Vejayan s/o Govindasamy has delusional disorder – persecutory type (F22.0, International Classification of Diseases, edition 10; 297.1 Diagnostic and Statistical Manual IV

TR).

It is characterised by a paranoid delusion that his sister in law had been using black magic on him to cause him to have problems with his wife; he believed that the sister-in-law has placed charms on him, his wife and son. He believed that she is doing so because he and his wife broke off relationship with the sister-in-law and husband.

Mental state examination showed that he became very angry and agitated each time he talked about his sister in law. He believes that his sister in law has charmed or used black magic on him and his family. He said that he could not understand why his wife has changed so suddenly and there were so many problems in his marriage.

The delusional disorder is commonly related to the events in the person's life and commonly arises in middle age. In this case, he developed a delusion when he and his wife were having problems after the birth of their second child and after his wife was estranged from her sister. He believes that his sister in law has used black magic to cause problems in his marriage and she was doing it because he had caused a break up between her and Smaelmeeral.

It is a delusion as it is a false and unshakable belief. He was very agitated each time he talked about his sister in law using charms or black magic on him. It is a false belief about his sister in law wanting to harm his marriage and he cannot be shaken from this belief.

It is usual for him and other patients to seek treatment for their symptoms from traditional healers. He attributed his marital problems to a spiritual cause or black magic.

Tharema said that he had killed his wife. He said that he could not understand why he had done so. He believes that the black magic had caused him to kill his wife.

…

Opinion

Mr Tharema Vejayan s/o Govindasamy has delusional disorder – persecutory type which is characterised by a belief that his sister in law is using black magic to cause problems to his marriage by placing charms on him, his wife and son.

…

He can qualify for the defence of diminished responsibility at the time of the alleged offence. He has abnormality of mind induced by disease (delusional disorder – persecutory type) which substantially impaired his mental responsibility for his acts that caused the death of his wife.

88 Dr Kenneth Koh also testified in rebuttal on this defence. He was of the view that before a delusional disorder could be diagnosed, one must first suffer from a delusion. A delusion was defined by him as a false unshakable belief not in keeping with the social and cultural background of the patient. Dr Kenneth Koh was of the further view that since black magic was believed by the accused person's family and friends and is actually quite a commonly held belief of people in this region, this was in keeping with the social and cultural background of the accused. The accused was therefore not suffering from any delusion. In addition, the accused also did not suffer from any psychotic symptoms, which would otherwise indicate that he was suffering from a delusional disorder.

89 Dr Kenneth Koh submitted a report on the mental state of the accused on 30 July 2007. The relevant parts of the report are reproduced below:

> **Mental State at Time of Alleged Offence**
>
> Mr Tharema presented as a man who was attentive during the interview and displayed no odd behaviour.
>
> He denied having any symptoms of psychosis at the time of the incident or ever before. Thus, he did not experience any hallucinations or delusions. His speech was relevant with no evidence of thought disorder. He also did not experience any feelings of his thoughts being interfered with.
>
> There was also no evidence that his mood was significantly disturbed during the time of the alleged offence. There was no sustained period of low mood, sleep or appetite disturbance, impairment of concentration or experience of anhedonia.
>
> **Opinion**
>
> I am of the opinion that:
>
> 1. Mr Tharema does not suffer from any mental disorder.
>
> 2. He was not of unsound mind at the time of the alleged offence.
>
> 3. He is currently fit to plead in a Court of Law.
>
> 4. As Mr. Tharema has no mental disorder, he does not have an abnormality of mind that would have significantly impaired his responsibility for his actions.

90 I asked Dr Tommy Tan why, if the accused was suffering from a delusion that his sister in law had used black magic on his family, he chose to attack his wife and not the sister in law. In other words, what was the nexus between the delusion and the killing of the deceased? Dr Tommy Tan candidly admitted that he was unable to provide an explanation for this and that the accused could not assist him on this because he could not recall the events of that fateful morning.

(iii) Possibility of Suicide

91 The defence also alluded to the fact that the deceased had a history of being suicidal. In this regard, the accused testified that the deceased had previously attempted suicide and was thereafter warded in the Institute of Mental Health in 2006. Although the deceased was diagnosed with adjustment disorder at the Institute of Mental Health, Dr Tommy Tan was of the view that such a diagnosis did not necessarily mean that the deceased was *not* suicidal. Dr Tommy Tan pointed out that the diagnosis of "adjustment disorder" by the Institute of Mental Health was non-specific as there were at least seven types of adjustment disorders.[note: 98] An adjustment disorder could be a prolonged depressive reaction or a brief one. Dr Tommy Tan was of the view that although the Institute of Mental Health had diagnosed the deceased as not suicidal, that could be due to the fact that the deceased had entered a "safe environment" and was therefore no longer suicidal. However, according to Dr Tommy Tan, this also meant that the deceased could become suicidal again once she was out of that "safe environment".

A: Erm, the diagnosis made by Dr. Lee is a very non -specific diagnosis. Er, it comes under the rubric of 43.2 International Classification of Diseases, er, WHO. And it says---states all subjective stress and distress, emotional disturbance usually interfering in social function and performance. Okay. And here it reads---it classifies that at least – one, two, three, four, five, six – seven types of adjustment disorders, okay.

Q: Yes.

A: There's nothing in the report that states what kind of adjustment disorder is she, the deceased was suffering from, all right.

Q: Yes.

A: It can be a brief one which lasts for a month. It can be a prolonged one. A brief depressive reaction, according to this book---

Q: Yes

A: ---which can last up to a month or a prolonged depressive reaction that lasts up to 2 years. So if you're talking about an adjustment disorder, it's not like an acute reaction to a situation. It is a prolonged---it is a ---it is a disorder that lasts for a period of time. So it's not the morning before---the night before she had a fight with her husband, she attempted suicide, she goes to a hospital, she settles down and that's it. If it was the case, then there's no need for the hospital to give, er, the deceased another appointment. The fact she gave another appointment and er, she didn't turn up. Rather the husband turned up. So she was suffering for a prolonged or well, a mental disorder of some period of time, not something that is just that night alone.

Q: Yes, sure, sure.

A: Okay.

Q: All right.

A: And the other thing is just because she may not be suicidal, all right, when she admit to the hospital, a lot of our patients who are suicidal before admission become non-suicidal because they come into a safe environment.

Q: Yes.

A: Okay, and when they come to a safe environ---environment and the doctor makes sure that everything is well with her and that she can go back to, er, proper care, they will release her. So it's not normal for her not to be suicidal the following day.[note: 99]

Decision of the court in the trial proper

92 The prosecution grounded its the case on s 300(a) and 300(c) of the Penal Code. The respective sub-sections provide as follows:

> Murder
>
> **300**. Except in the cases hereinafter excepted culpable homicide is murder –
>
> (a) if the act by which the death is caused is done with the intention of causing death;
>
> …
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

Whether the accused was present at the crime scene?

93 Although the Defence had suggested the possibility that it could have been the deceased's ex-boyfriend, Manimaran, who was at the scene, the objective facts clearly placed the accused with the deceased on 1 July 2007. Several blood swabs were taken at the scene as evidence but none was connected to Manimaran. As set out above (see [38]), the Head of Criminal Records testified that Manimaran's DNA was in the national DNA database and this meant that Manimaran's DNA would have been compared with the blood swabs collected to see if there was a match. Not only were positive blood swabs matching the accused's DNA found at the scene (both in lift A and on the parapet wall on the 13th floor of Block 181), there were also two bus drivers who saw and identified the accused as the man they saw at Block 181. Razak's testimony also showed unequivocally that the accused was dropped off in the vicinity of Block 181 and picked up a little later in that same area. The accused had gone to Queenstown to look for the deceased. Clearly, the accused was at Block 181 and its vicinity on 1 July 2007 and had met the deceased.

Actus Reus: Whether the deceased committed suicide or was thrown over the parapet wall?

94 There were also suggestions that the deceased might have committed suicide. However, the police statements made by the accused showed that the accused had thrown or somehow pushed the deceased over the parapet wall. I would refer in particular, to the statements made to ASP Cindy New on 10 July 2007:

> Q2: Can you tell me how hard did you slap Meera while at the bus stop?
>
> A2: I was angry at that time, to me, I slapped her in normal way. This is the way I slapped her throughout from the bus stop to the block and even *before I threw her off*.
>
> Q5: You led the police to the corridor of the 13th storey, where you threw Meera down. Can you describe how you throw Meera over the parapet?
>
> A5: I remembered that after I carried Meera to my chest level to let go of her over the parapet I stood only my toes and *put my hands over the parapet and let go of Meera*. During the process, Meera's body did touch the metal railing.

(emphasis added)

Similarly, the accused described during the scene visit how he had thrown the deceased down from the 13th floor. I refer to the field investigation diary as reproduced here:

> 1130 …The accused informed that he made Meera sit, leaning against the parapet wall. He scolded and slapped her. Her legs were bent. Her head slidded to the ground, nearer to the lift. The accused was angrier seeing that and he picked the deceased up and threw her over the parapet. The accused informed that he did not move the position of the deceased's body before he threw her down the block. *He carried the deceased with her head and her legs over the parapet together*. The deceased did not struggle. She was saying something but the accused do not know what she was saying. *After throwing her over the parapet, the accused turned and walked away*.
>
> (emphasis added)

95 Dr Tommy Tan felt that suicide was a high probability, given the deceased's history of suicide attempts. However, Dr Lau pointed out that the deceased had lost a lot of blood and it would not have been possible for her to muster the strength to pull herself over the parapet wall. It was also clear that the deceased was quite intoxicated then and would not have been able to commit suicide without any help. The forensic evidence at the scene did not suggest suicide at all. Even if the deceased had ventilated to her friends her desire to die, her actions on 1 July 2007 certainly did not indicate that she was suicidal or depressed, although she may have missed having the companionship of the accused after their divorce. To the contrary, the deceased was out partying and having a good time with her friends and parted with them in a jubilant mood. Committing suicide could not have been on her mind.

96 For the above reasons, I found that the accused had indeed thrown or pushed the deceased over the parapet wall to fall to her death. Although the accused's description of how the deceased went over the parapet wall was different from the reconstructed version by the prosecution's forensic experts, this was immaterial to the charge. In his statements, the accused stated that he had "put [his] hands over the parapet and let go of Meera". The prosecution's forensic experts on the other hand were of the view that the deceased was "pivoted" over the parapet wall for "some time" before being pushed over. Given that the accused claimed total amnesia about the crucial moments, the veracity of his version in his statements could not be tested in court. The evidence still showed that the accused caused the deceased's death by causing her to fall from the 13th floor of Block 181.

97 For the above reasons, I found that the deceased did not commit suicide and that the accused had thrown or pushed her over the parapet wall. The *actus reus* for murder was therefore established.

Mens Rea: Whether the accused had the requisite intention under ss 300(a) and (c) of the Penal Code?

98 The *mens rea* required in s 300(a) is the intention to kill the deceased, whereas s 300(c) only requires that the accused had the intention to cause bodily injury to the deceased of a nature which is sufficient in the ordinary course of nature to cause death.

99 I agree with the defence that the accused originally went to Queenstown with the intention to find his ex-wife and not to kill her. After all, the accused was out drinking and he would not have been able to anticipate the deceased's phone call for help.

100 Intention should be distinguished from motive. The Court of Appeal noted in *Ranwilage Fernando v Public Prosecutor* [1998] 3 SLR 893 ("*Ranwilage Fernando"*) at [45] that all that is required in a murder trial is "proof of the act" and *mens rea*: it is "not necessary to establish motive". This much was also noted in Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2007) ("*Criminal Law in Malaysia and Singapore*") at [9.32]:

> Intention is also different from desire and motive. Desire and motive involve consideration of a person's 'feelings' or of their reasons for behaving in a particular way. Intention is a more 'neutral' term and a person may intend something without desiring it…A mother who suffocates and kills her young son, who is close to death and in great pain from terminal cancer, intends to kill him. This is so even though she wanted to spare him further suffering and the last thing she would ever have really wanted or desired would have been to kill her own child. Her underlying reasons for acting in this way must fall to be considered, if at all, through the general and special exceptions and not through the question of intent.
>
> (emphasis added)

101 An intention to kill can often be inferred objectively from facts surrounding the fatal wound or injury inflicted upon the deceased. Relevant factors include the kind of weapon used, the location of the injury and also the number of injuries found on the deceased. Therefore, it was sufficient for an intention to kill to be inferred in the case of *Ranwilage Fernando* because it was a single stab wound to a *vital* organ (*Ranwilage Fernando* at [46].) Similarly, multiple wounds inflicted on the…victim by a sharp object…only lead to one and only one conclusion – that the person who caused them had intended to commit murder" (*Public Prosecutor v Krishna a/l Gurumurthi & Ors* [2000] 1 MLJ 274 at 310).

102 While the accused may have intended originally to bring the deceased home, the situation obviously changed after he saw the state of the deceased at the bus stop. In this case, by throwing or pushing the deceased over the parapet wall from the 13th floor, death was a practical certainty. It can therefore be inferred that the accused intended to kill the deceased (See *Neville v Public Prosecutor* [1992] 1 SLR 153 and *Public Prosecutor v Yeo Watt Song* [1993] SGHC 159). At the very least, by causing the deceased to fall down from that height, the accused certainly had the intention to cause such bodily injuries (i.e., the multiple injuries sustained from the fall) that were sufficient in the ordinary course of nature to cause death (see also the autopsy report above).

103 It is not possible to identify the exact moment at which the accused formed an intention to kill or to cause the fatal bodily injuries to the deceased. The accused attacked the deceased viciously at the bus stop. It was therefore possible that the accused formed the requisite intention at the bus stop. It was equally possible that the accused formed the intention only when he pressed the lift button for the 13th floor. In any case, the exact point at which the requisite intention was formed is immaterial because by causing the deceased to fall from that height, the only reasonable inference was that he intended her death.

104 For the above reasons, I found that the accused threw or pushed the deceased over the parapet wall at the 13th floor and in doing so, either intended to kill her or to cause such bodily

injuries that were sufficient in the ordinary course of nature to cause death. Therefore, the elements of sections 300 (a) and (c) were amply established.

Law of Intoxication

105 The accused also invoked the defence of intoxication. The defence of intoxication is spelt out in s 85 and s 86 of the Penal Code:

> **Intoxication when a defence**
>
> 85.—(1) Except as provided in this section and in section 86, intoxication shall not constitute a defence to any criminal charge.
>
> (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and —
>
> (*a*) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
>
> (*b*) the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.
>
> **Effect of intoxication when established**
>
> 86.—(1) Where the defence under section 85 is established, then in a case falling under section 85(2)(*a*) the accused person shall be acquitted, and in a case falling under section 85(2)(*b*), section 84 of this Code and sections 314 and 315 of the Criminal Procedure Code [(Cap 68, 1985 Rev Ed)] shall apply.
>
> (2) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
>
> (3) For the purposes of this section and section 85 "intoxication" shall be deemed to include a state produced by narcotics or drugs.

106 As noted in *Criminal Law in Malaysia and Singapore* at [25.3], there are essentially three forms of the defence of intoxication:

> Three forms of the defence of intoxication can be extracted from these provisions. The first is where a third party had maliciously or negligently caused the accused to become intoxicated to the extent of not knowing the act to be wrong or what he or she was doing. This is sometimes described as involuntary (or non self-induced) intoxication. The second form of the defence is where the accused was so severely intoxicated as to have been insane at the time of the alleged crime. Thirdly, an accused will be acquitted of a crime which has intention as an element should intoxication have prevented him or her from having that intention. For the second and third forms of the defence, the intoxication could have been voluntary(or self induced).

(i) Section 85(2)(a)

107 On the facts, the first form of the defence under s 85(2)(a) clearly does not apply because

there was no evidence of involuntary intoxication. In fact, the accused was celebrating Razak's birthday and any consumption of alcohol was therefore done with his full knowledge.

(ii) Section 85(2)(b)

108 On the second form of the defence under s 85(2)(b), the Court of Appeal in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR 306 ("*Tan Chor Jin*") clarified at [24] that insanity by intoxication was a concept to be distinguished from the defence of unsoundness of mind under s 84. While the accused need not show that he was suffering from a permanent mental disease, insanity by intoxication still required him to show that he was unaware of what he was doing or that his actions were wrong:

> 24 We are of the view that the two concepts – viz, unsoundness of mind in s 84 on the one hand and insanity by reason of intoxication in s 85(2)(b) on the other – are indeed different. One should not be too astute to attribute statutory superfluousness to Parliament where the use of the word "insane" in s 85(2)(b) is concerned. Section 85(2)(b) refers to a different basis for exoneration from that afforded by s 84 as the former is grounded on intoxication-induced insanity. In contrast, the unsoundness of mind embraced by s 84 refers to an abnormal state of mind that covers diseases and deficiencies of the mind, both of which are invariably permanent conditions. The reference to "temporarily or otherwise" in s 85(2)(b) is neither accidental nor superfluous. These words do not refer merely to the temporary symptoms or effects of intoxication. Rather, they refer to an abnormal state of mind that can, inter alia, be transient. In short, s 85(2)(b) reinforces the point that an otherwise normal person can, under the influence of drink or drugs, become so intoxicated that he becomes legally "insane". This condition of insanity can be transient, as opposed to the unsoundness of mind envisaged in s 84, which must be permanent.
>
> While the accused need not show that he was suffering from a permanent mental disease to fall under s 85(2)(b), any form of intoxication induced insanity however transient must be shown to be of such a "degree that [the accused] did not know that his actions were wrong or did not know what he was doing.

109 On the facts, there was nothing to show that the accused did not know what he was doing or that what he was doing was wrong. I disagreed with the defence that the actions of the accused showed that he was a "raving mad man"[note: 100]. On the contrary, I agreed with the prosecution that the accused was very much aware of what was happening for the reasons that follow.

110 Firstly, after alighting from Razak's car, the accused called him to thank him for the ride to Queenstown as he (the accused) was talking with the deceased over the phone during the journey there and he had forgotten to thank Razak when he alighted. I do not think that a person intoxicated to the extent claimed would have the presence of mind to be making a call and then remember subsequently he had not thanked Razak.

111 Secondly, the accused told the police that he had brought the deceased into the lift so that he could slap her "out of the view of others". This showed that the accused was aware of his surroundings and did not want anyone to see him beating up his ex-wife. I reproduce the relevant portion of his statement recorded on 5 July 2007:

Q13: With reference to paragraph 2 of your statement, why did you drag her to the block in front of the bus-stop?

A13: Actually, I wanted to bring her to the chairs at the block, to make her sit down and freshen up. I carried her by her armpit with my right hand and dragged her there. After we passed by the car park in front of the block, I saw the drunken state she was in and could not take it anymore. I wanted to slap her some more and decided to do that inside the lift, out of the view of others.

112 Thirdly, as explained by Dr Tay, the accused descended from the 13th floor to the 12th floor using the staircase, from the 12th floor to the 2nd floor using the lift and thereafter walked down the stairs from the 2nd floor to the ground floor. This was an elaborate way to descend from the 13th floor and this showed his presence of mind because he clearly had a logical plan to avoid being seen by others. The fact that a bloodstain belonging to the accused and to the deceased was found beside the lift button of lift B[note: 101] at the 12th floor indicated that the accused had wanted to take lift B down to the 2nd floor but somehow lift A came up. This was only logical because lift A was covered in blood and the accused probably did not want to be seen coming out of that lift. This showed a logical mind which was inconsistent with the assertion of alcohol-induced insanity.

113 Fourthly, when the accused reached the ground floor, he saw the two bus drivers looking at him. The drivers testified that the accused had turned to his right to look at the body of the deceased and upon seeing the bus drivers, the accused turned and walked away towards the back of Block 181. This showed again that the accused wanted to avoid detection.

114 Fifthly, the accused managed to call Razak to pick him up from Queenstown Sports Complex. This showed that the accused knew where he was at that point of time. If he had read the name of the place from a signboard, that showed that at the very least, he was still sober enough to read. Razak had dropped off the accused at a different location one street away and if not for the accused's instructions, would not know where the accused was. The accused's ability to relay information showed that he still had his senses about him.

115 Sixthly, the accused had the presence of mind to go home and change his clothes and thereafter dispose of them on the way to his brother's house. This was clearly an attempt to dispose of critical evidence and it reflected his coherent state of mind then. I refer to the police statement recorded on 4 July 2007:

> 5 About 20 minutes later, Razak came with another friend, Appu. I got into his car and he asked if everything was alright. I told them everything was fine and I told him to drive home. Razak drove off after he dropped me at my block. I went home to shower and change my clothing. I placed my tee shirt, jeans and shoes that I wore earlier into a plastic bag. After that I left my house and walked to my brother's house about 2 streets away. *I threw the plastic bag containing my clothing and shoes at the bus stop along the way to my brother's house*.
>
> (emphasis added)

116 Seventhly, if the accused was intoxicated to the extent claimed, it would only be logical for him to suffer from a hangover the next day. However, when he met up with Razak and Pannirselvam later that afternoon, there were no complaints from him about a hangover. Similarly, when Razak

called the accused to inform him that the police was looking for him, the accused did not appear to be in a haze as to what it was all about.

117 Finally, there are the statements given by the accused to the police and to Dr Kenneth Koh. The accused told Dr Kenneth Koh that he "knew his limit" when it came to drinking and in his police statements, the accused said he was not drunk. I refer to the police statement recorded on the 5 July 2007:

> Q4: Reference to Q2, what did you drink at the pub?
>
> A4: We reached there about 1plus. On our arrival, the birthday decoration was already done. We just did some final arrangement. I started drinking whiskey, only after 1am. I drink only about 12 to 13 glasses. It was whiskey mixed with coke, *I did not get myself drunk*.
>
> (emphasis added)

Section 86(2) of the Penal Code

118 Section 86(2) requires two elements to be met. The requirements are succinctly summarised in the Court of Appeal's decision of *Tan Chor Jin* at [27]:

> 27 We turn now to s 86(2) of the Penal Code, which is the last of the three avenues through which intoxication may be raised as a defence (see [17] above). Two requirements must be met before this subsection can be successfully invoked. First, the accused must show evidence of his intoxication. In this regard, objective evidence of the accused's level of intoxication is crucial (see *Jin Yugang v PP* [2003] SGCA 22 at [32]). Second, even if the accused can prove that he had consumed a considerable amount of alcohol, the surrounding facts must show that he was so intoxicated that he could not form the intention which is a necessary element of the alleged offence (see *Mohd Sulaiman v PP* [1994] 2 SLR 465 ("*Mohd Sulaiman*") at 474, [31]).

119 In respect of the first requirement, there was a lack of clear evidence as to the accused's level of intoxication. While the accused himself claimed that he drank 12 to13 pegs of alcohol, his friend Pannirselvam testified that the accused drank Graveyard and Tequila as well. However, this would be inconsistent with the accused's professed drinking habit because he said he did not like to mix his drinks. The only consistent evidence was that the accused drank about 10 to 13 glasses of whisky. While the accused managed to estimate the dimensions of the whisky glass and also his pouring habits (half portion of whisky with half portion of coke), we have to bear in mind that he added ice to his drinks as well. This would have diluted the actual amount of alcohol consumed.

120 In any event, accepting that the accused drank a lot of alcohol at Raagawoods and was intoxicated, the question is, to what degree? The second requirement of s 86(2) measures the extent of intoxication: the surrounding facts must show that the accused was intoxicated to such an extent that he was unable to form the intention required of the alleged offence.

121 The objective facts as discussed above not only showed that the accused was not insane by intoxication but also that he was not intoxicated to such an extent that he was unable to form the requisite intention for murder. The accused was able to give the police a detailed account of what happened that early morning. The detailed statements were clearly not made by a man who was so severely intoxicated that he did not know what had happened or could not have formed an intention

to kill. For instance, in the police statement recorded on 6 July 2007:

> Q24: With reference to paragraph 4 of your statement, can you describe how did you pull Meera to the corridor of the first unit from the lift?
>
> A24: When I walked out of the lift, Meera was lying down. I lifted her up by one side of her armpits using my right hand. By the same way, I pulled her out from the lift but she was not able to stand on her feet and she fell to the floor. This time, I did not lift her up, but pulled her by the same armpit with my right arm and dragged her towards the corridor outside the first unit. When I dragged her towards the corridor, my right arm was straightened and I was walking in a forward direction.

122 Despite his detailed statements, the accused claimed a state of total amnesia during the trial. While Dr Tommy Tan has explained that his amnesia at trial could have been the result of an imperfect formation of memory due to intoxication that night, I found that the evidence adduced showed clearly that the accused had the ability to form the requisite intention on 1 July 2007 and that indeed he had the intention to commit murder.

Law of Diminished Responsibility

123 The accused also relied on the defence of diminished responsibility under Exception 7 to s 300 of the Penal Code, which provides:

> *Exception 7*.—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.

124 In *Zailani bin Ahmad*, the Court of Appeal reiterated the three limbs required of an accused person before the defence of diminished responsibility is established. The three limbs are:

> (a) he must have been suffering from an abnormality of mind;
>
> (b) such abnormality of mind must have:
>
> (i) arisen from a condition of arrested or retarded development of mind; or
>
> (ii) arisen from any inherent causes; or
>
> (iii) been induced by disease or injury; and
>
> (c) such abnormality of mind as in (b)(i) to (b)(iii) must have substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

125 In addressing limb (a), the phrase "abnormality of mind" was described in *R v Byrne* [1960] 2 QB 396 ("*Byrne*") at 403 as "a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal". The phrase is 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 as to whether an act is right or wrong and also the ability to exercise will power to control physical acts in accordance with that rational judgement (*Byrne* at 403). In essence, as illustrated in *Took Leng How v Public Prosecutor* [2006] 2 SLR 70 at [47], the first limb requires two questions to be answered:

> What warrants emphasis is that limb (a) requires the court to be satisfied not only of the fact that the accused was suffering from a condition that a reasonable man would consider abnormal, but further that the abnormality was of such a degree as to impair the accused's cognitive functions or self-control. This latter requirement focuses on the "extent" of the alleged abnormality. It is necessary because a person who suffers some sort of malady that may be deemed as abnormal need not necessarily suffer from any impairment of his or her cognitive functions or ability of self-control. Limb (a) should never be deemed satisfied unless the extent of the purported abnormality is also established.

126 It is also pertinent to remember that conflicting expert evidence would often be adduced and while the court can seek guidance from available medical evidence, the court has to draw its own conclusion on the matter, taking into consideration all the facts of the case. In this regard, I refer to the case of *Zailani bin Ahmad* at [49] to [50]:

> 49…However, in coming to a decision on whether an accused is suffering from such an abnormality of mind, the court is entitled to seek guidance from available medical evidence. Where the court is faced with evidence conflicting with such medical evidence, it is within the discretion of the court to form its own conclusion on the matter, taking into account other facts such as the acts or statements of the accused and his demeanour, and any other conflicting medical opinion: R v Byrne, as accepted by this court in DZ v PP [1998] 2 SLR 22 at [21] and [22].
>
> 50 In this context, it is a settled principle that, even where such medical opinion is unchallenged, the trial judges would be perfectly entitled to reject or differ from the opinions of the medical men, if there are other facts on which they could do so: Sek Kim Wah v PP [1987] SLR 107, following Walton v R (1977) 66 Cr App R 25, R v Byrne and R v Kiszko (1978) 68 Cr App R 62. This court's decision in Sek Kim Wah v PP was cited with approval in its later decisions in Contemplacion v PP [1994] 3 SLR 834 at 844, [36] and Zainul Abidin bin Malik v PP [1996] 1 SLR 654 at 661–662, [29] and [30].

127 Limb (b) on the other hand characterises the basis for the abnormality of mind and is therefore a question of medical fact. Limb (b) is a concept to be distinguished from the "reasonable man's notion of whether someone is suffering from an abnormality of mind" (*Zailani bin Ahmad* at [51]). Limb (c) concerns the extent of impairment and requires that the accused be substantially impaired by the abnormality of mind. Limb (c) is "ultimately one for the court to answer" (*DZ v PP* [1998] 2 SLR 22l; *Zailani bin Ahmad* at [52].)

128 While a reasonable man who does not believe in black magic may think that the accused had a state of mind so different from ordinary human beings, it was clear on the facts that the accused had a very lucid mind before, during and after killing the deceased. The same findings relating to the accused's acute awareness of the events that fateful morning that disentitled him from invoking the defence of intoxication also apply here and I need not repeat them. As Dr Kenneth Koh has said, the accused had enough control of himself to be aware of what he was doing although the alcohol probably did disinhibit him in his control and perhaps judgment as well, meaning no more than that a person who had imbibed too much alcohol could be more daring and impulsive than he might otherwise have been. That falls far short of the requirements of Exception 7 in s 300.

129 Dr Tommy Tan was of the view that the accused was suffering from a "delusional disorder – persecutory type". I was also not convinced by the conclusions of Dr Tommy Tan for the following reasons.

130 Firstly, Dr Tommy Tan in coming to his conclusions had relied on the accused's account of hearing voices and seeing black objects. I reproduce the relevant parts of Dr Tommy Tan's report as follows:

> **Psychiatric Symptoms**
>
> After he and his wife broke off relationship with the sister-in-law and her husband, many things happened to him. He said that he lost his job. There was something black blocking half of his right eye.
>
> He went to see a bomoh in Clementi with a friend named Ricky for the black magic blocking his right eye. His eye became much better after that….
>
> **Account of the alleged offence by Mr Tharema**
>
> Tharema pulled and carry Smaelmeeral to the nearby block to sit at the chairs. He saw the lift and he thought he was at his block. He said that he pressed the lift. He scolded her in the lift because she slipped. When the lift door opened, he realised that was not his block. He saw something black on the floor. He said that he just threw the thing.

However, the accused never mentioned such "black objects" in his police statements or to Dr Kenneth Koh. It was strange that the accused would only mention such details a year later in 2008 when he was being examined by Dr. Tommy Tan. Dr Kenneth Koh examined the accused about two weeks after he was arrested and observed no psychiatric symptoms or signs of any psychotic disorder.

131 Secondly, during cross examination, the accused was not only self-contradictory in his evidence but also inconsistent with his account to Dr Tommy Tan. I reproduce the relevant parts of his evidence below:

Q: Did you tell Dr Tommy Tan that while you were on the 13th floor of Blk 181 Stirling Road on that particular day, there was a black thing covering your right eye? Did you tell that to Dr Tommy Tan?

A: I did not refer to him that the partially black eye---partially blind eye on the---the 13th floor on that day. But earlier, I told him about it.

Q: Okay, You told him about it earlier. Specifically, Mr Tharema, did you tell Dr Tommy Tan that you saw something black on the floor at the 13th storey of Blk 181 Stirling Road? Did you tell Dr Tommy Tan that?

A: Yes I did.

Q: Oh you did. So did you actually see something black on the 13th floor, Blk 181, at the time of the incident?

A: I have not seen it on that incident---

Q: Yes?

A: ---during that incident.

…

Q: Yes, So did you tell Tommy Tan that at Blk 181 Stirling Road you saw something black on the floor and you threw that thing away?

A: Yes, I have told him.

…

Q: I see. Now let us forget about what you told the psychiatrist, the police or anyone. Tell us now---tell the---tell his Honour, did you or did you not see any black thing on the floor at Block 181 Stirling Road?

A: I did not.

Q: You did not. Right. So it necessary follow, right, that you did not then throw the black thing away, right?

A: Yes.

Q: So you have to agree with me, Mr Tharema, that you lied to Dr. Tommy Tan when you said that you threw black thing away and you saw the black thing at Block 181? Am I right?

A: Could be.

Q: Yes? Not "could be". It has to be, right?

A: That's right.

132 In any case, as mentioned earlier, Dr Tommy Tan was not able to explain the nexus between the alleged delusion and the killing of the deceased. This was not a case where the accused had a delusion about the deceased and then killed her while under such a delusion.

The Law of Grave and Sudden Provocation

133 The accused also pleaded the defence of grave and sudden provocation under Exception 1 to s 300 of the Penal Code which provides:

Exception 1.—Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The exception is subject to the following provisos:

(*a*) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(*b*) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;

(*c*) that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

134 The law of grave and sudden provocation was recently discussed in *Seah Kok Meng v Public Prosecutor* [2001] 3 SLR 135 ("*Seah Kok Meng*"). There are two requirements to the defence. Firstly, the subjective requirement that the accused was deprived of his self-control. In ascertaining the loss of self control, "it is necessary to look at the objective facts" because "mere assertion would not suffice" (*Lau Lee Peng* v *Public Prosecutor* [2000] 2 SLR 628 ("*Lau Lee Peng*") at [32].) Secondly, the objective requirement that the provocation was "grave and sudden" which requires the application of the 'reasonable man test' (*Seah Kok Meng* at [21]). The 'reasonable man test' was introduced "to deny the defence to those who overreact because they are 'exceptionally pugnacious and bad tempered and over-sensitive" (*Public Prosecutor v Kwan Cin Cheng* [1998] 2 SLR 345 ("*Kwan Cin Cheng*") at [65]). The question to be asked in the 'reasonable man test' is whether an ordinary person would have been so provoked as to lose his self-control when placed in the same situation. In ascertaining the objective test, earlier events and the "mental background" created in the accused's mind are relevant factors (*Kwan Cin Cheng* at [50]). The mental infirmities of the accused could also be considered if they affected the gravity of the provocation, but "individual peculiarities which merely affected the accused's power of self control but not the gravity of the provocation should not be taken into account" (*Lau Lee Peng* at [29]).

135 The Court of Appeal in *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR 1058 ("*Johari*") has also observed:

> 102 It is also important to note (in so far as the first requirement relating to a loss of self-control is concerned) that the antithesis of a loss of self-control is deliberation (and even calculation). The former is a necessary (albeit not sufficient) prerequisite before the defence under Exception 1 will be successful. The presence of the latter, on the other hand, indicates that the provocation was not sudden and the defence would therefore not succeed (see, for example, the Singapore High Court decision of PP v Tsang Yuk Chung [1988] SLR 812 at 820, [33], where the court held that "the stabbing was a calculated and deliberate act"; see also Lim Chin Chong ([99] supra) at [30] and Seah Kok Meng at [25], as well as above at [96]). It is equally clear that "[m]ere assertion would not suffice" (per Chao JA in Lau Lee Peng at [32]).
>
> 103 It is also important to emphasise that whilst (as clearly set out in the local case law noted above) there is no requirement of "proportionality" as such, the severity of the physical assault is

a factor which the court would (in most cases at least) take into account (see, for example, Seah Kok Meng at [26]).

136 The alleged provocation here was the deceased's dressing that night and because the accused felt that the deceased was always out drinking and getting herself drunk. He was therefore "fed up" with her. This much was mentioned in his police statements. I refer to the police statements recorded on 5 and 6 July 2007:

> Q8: With reference to paragraph 2 of your statement, what do you mean that she was dressed in the manner that you did not like?
>
> A8: At that time, she was wearing a half bare-back black blouse with low cut neck line in the front. I think it was too revealing for me, especially that she went clubbing in that dressing and also got herself drunk. I was even more furious when I saw a bottle of 'Baron' beer beside her. The alcohol content for 'Baron' beer was much higher than 'Tiger' beer which I think it was not suitable for her as she cannot even stomach 3 glasses of normal beer. That was why I slapped her.

(Statement recorded on 5th July 2007)

> Q25: With reference to paragraph 4 of your statement, what did you intend to do when you pulled Meera out of the lift?
>
> A25: When I brought her into the lift was to discipline her by scolding her and slapping her. When the lift door opened at the upper floor, I had to bring her out of the lift… At the corridor outside the first unit, I made her sit against the parapet wall facing the unit…I saw that she was not waking up and not doing anything. I was very angry. I see that there was no use scolding and slapping her. She was doing he same thing every time, getting herself drunk all the time. I felt ashamed of what she did. I really fed up and I just carried her up and threw her down the block.

(Statement recorded on 6th July 2007)

137 The defence submitted that the accused snapped upon seeing the deceased and that there was grave and sudden provocation because the accused did not expect to see the deceased in a drunken state:

> So similarly on this occasion also, he went to fetch her home. And he did not expect her to be in this state, your Honour, as described in the statement. And your Honour, I'm submitting that the accused snapped, your Honour. And there was grave and there was sudden provocation, your Honour, on the available evidence, and my client just succumbed and started slapping her, your Honour, going by the statement.[note: 102]

138 The facts showed that the accused did not lose self control and neither was any provocation grave and sudden. The accused was unhappy about the deceased's dressing and her drinking habit but these were points of quarrel in their life together. They had many quarrels in the past on the

same issues. The accused's acts of hitting the deceased were consistent with his quick tempered nature. There was nothing unusual on 1 July 2007 which would have caused him to lose self control and to kill the deceased. The fact that the accused brought the deceased into the lift in order to bring her out of the public eye was further evidence that he was in control of his actions. I disagreed with the defence that the accused did not expect the deceased to be in the state that he found her in. The accused was fully aware that the deceased was out drinking because she had called Razak earlier. Hence, he went to look for the deceased knowing that she was so drunk she needed help to go home.

139 In any case, I found that the second requirement of grave and sudden provocation was also not satisfied. Firstly, it was not the first time that the deceased had got herself drunk and there had been many quarrels between them over her drinking habits. The accused should be well acquainted with her drinking habits and therefore her drunkenness on 1 July 2007 could not have amounted to grave and sudden provocation. Secondly, by objective standards, the clothes worn by the deceased were not so revealing that a reasonable person would have reacted in the same manner that the accused did. Indeed, the deceased was wearing a pair of black pants that night and while she wore a sleeveless top, there was also a jacket belonging to her (which she would have worn when she went out drinking) that was found at the bus stop. Her friend, Selvaranee, testified that the deceased was not dressed in an unacceptable manner that night:

Q: Was that the first time you went to a pub with her?

A: Quite a few times.

Q: Now, as compared to the previous time that she went clubbing with you---

A: Mm-hm

Q: --- can you describe her dressing that night?

A: Erm---

Q: How---how do you think her dressing was?

A: She always used to be in jeans---jeans and the tops. She don't wear so sexy and all that. She normally comes in a long pants and a T-shirt or something with sleeveless T-shirts, something like that.

Q: The previous times that she went to the pub, how did she dress?

A: The same.

Q: Is it in jeans or in sleeve---

A: She was in a, er, jeans also.

Q: So her dressing that night, how would you describe her dressing?

A: Actually the dressing is quite reasonable, not so sexy and all that because she was covering with jacket and all that and she---her hair was let go, so I don't seem there's any sexiness on that. She just looked very normal, actually.

140 The provocation was certainly not sudden. If the accused was provoked by the drunken state of the deceased at the bus stop and by what she was wearing, he still had time to calm down because the entire episode from the bus stop to the 13th floor took some twenty minutes. It would not have been likely in the circumstances for any sudden provocation to have occurred on the 13th floor because the deceased was so intoxicated and, after the severe beating and blood loss, would not be in any position to provoke the accused. Indeed, she was so weak that the accused had to rest her body against the parapet wall on the 13th floor. Further, surely the mere slumping of the body into a helpless heap could not be a triggering point to a reasonable man. Neither could an inability to respond orally by a practically unconscious woman be deemed to be such.

141 Whether the accused was provoked at the bus stop or sometime later, he clearly had time to reconsider his actions but he did not. In any event, there was no evidence at all that the deceased offered any provocation verbally or physically besides being completely helpless.

Conclusion

142 For the above reasons, I found that the charge of murder was made out against the accused beyond reasonable doubt and there were no defences available to him. Accordingly, I convicted him and passed the mandatory death sentence on him.

[note: 1]Day 14 at Page 170, PW42 Prof Gilbert Lau, XXN by Knight at lines 1 and 2.

[note: 2]Day 14 at Page 170, PW42 Prof Gilbert Lau, XXN by Knight at lines 19 and 20.

[note: 3]Day 16 at Page 111, PW 54 Dr Danny Lo Siaw Teck, XXN by Radakrishnan at lines 16 to 26. See also Day 6 at age 9, PW21 Selvaranee d/o Kanakasabai XXN by Knight at lines 25 to 31.

[note: 4]Day 4 at Page 19, PW 17 Hametah Bte Abdul Aziz, Xn by Khoo at lines 1 to 5; also Page 21 lines 25 to 29.; also Page 24 at lines 1 to 10; also Page 65 at lines 4 to 20. See also police reports made by the deceased complaining of abuse. See also Day 5 at Page 16 PW 20 Mathinah Baham d/o Samsudeen, XN by Tan at lines 1 to 21.

[note: 5]See for example, police reports recorded by the Police Radio Division which were lodged by the deceased.

[note: 6]Day 4 at Page 35, PW 18 Abdul Jabbar Bin Mohamed Ahmed, XXN by Radakrishnan at lines 27 to 32. See also, Day 3 at Page 15 PW17 Hametah Bte Abdul Aziz XN by Khoo at lines 17 to 32.

[note: 7]Day 3 at Page 63, PW 17 Hametah Bte Abdul Aziz, XXN by Radakrishnan at lines 3 to 21.

[note: 8]Day 5 at Page 113 PW 21 Selvaranee d/o Kanakasabai, XN by Tan at lines 24 to 29.

[note: 9]See SMS messages.

[note: 10]See for example, s121 CPC statements made by the accused to ASP Cindy New.

[note: 11]Day 7 at Page 60, PW23 Abdul Razak s/o P Maudu, XXN by Radakrishnan at lines 27 and 28.

[note: 12]Day 8 at Page 5, PW 23 Abdul Razak s/o P Maudu XXN by Radakrishnan at lines 27 and 28.

[note: 13]See medical reports from IMH.

[note: 14]For the deceased's suicidal remarks, pls refer to Day 5, PW 20 Mathinah Baham d/o Samsudeen XN by Tan

[note: 15]Day 6 at Page 148, PW 22 Govindarajoo s/o Ramu RXN by Tan at lines 1 to 6.

[note: 16]See hospital records of the deceased. She terminated her pregnancies four times.

[note: 17]Day 8 at Page 22, PW 23 Abdul Razak s/o P Maudu XXN by Radakrishnan at line 1.

[note: 18]Day 7 at Page 18, Bundle 2, PW23 Abdul Razak s/o P Maudu, XN by Khoo at lines 17 and 18.

[note: 19]Day 8 at Page 12, PW23 Abdul Razak s/o P Maudu, XXN by Radakrishnan at line 2.

[note: 20]Day 23 at Page 105, 1TDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 24 to 30.

[note: 21]Day 23 at Page 105, 1TDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 19 to 23.

[note: 22]Day 8 at Page 21, PW23 Abdul Razak s/o Maudu, XXN by Radakrishnan at lines 9 to 13.

[note: 23]Day 1 at Page 92, PW8 Goh Chin Hock, XN by Khoo at line 25.

[note: 24]Day 11 at Page 16, PW 25 Pannirselvam a/o Anthonisamy, XXN by Radakrishnan at lines 4 to 7.

[note: 25]Day 8 at Page 70, PW23 Abdul Razak s/o P Maudu, Question by the Court at line 5.

[note: 26]Day 7 at Page 29, PW 23 Abdul Razak s/o P Maudu, XN by Khoo at line 15.

[note: 27]Day 7 at Page 30, PW 23 Abdul Razak s/o P Maudu, XN by Khoo at line 7.

[note: 28]Day 7 at Page 33, PW 23 Abdul Razak s/o P Maudu, XN by Khoo at lines 16 and 17.

[note: 29]Day 7 at Page 36, PW 23 Abdul Razak s.o P Maudu, XN by Khoo at line 4.

[note: 30]Day 9 at Page 67, PW 25 Pannirselvam s/o Anthonisamy, XN by Khoo at lines 18 to 27.

[note: 31]P338, Statement recorded from Pannirselvam dated 18th July 2007.

[note: 32]Day 8 at Page 40, PW 23 Abdul Razak s/o P Maudu, XN by Khoo at lines 4 to 15.

[note: 33]Day 17 at Page 101, PW 59 Dr Tay Ming Kiong, XXN by Knight at line 6.

[note: 34]Day 17 at Page 108, PW Dr Tay Ming Kiong, XXN by Knight at lines 3 to 6.

[note: 35]Agreed Bundle at Page 190.

[note: 36]Day 17 at Page 48, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 1 to 6.

[note: 37]Day 17 at Page 52, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 1 to 9.

[note: 38]Day 17 at Page 61, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 22 to 31.

[note: 39]Day 17 at Page 52, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 1 to 9.

[note: 40]Day 17 at Page 63, PW 59 Dr Tay Ming Kiong, XN by Tan at line 1.

[note: 41]Day 18 at Page 14, PW 59 Dr Tay Ming Kiong, XXN by Knight at lines 14 to 18.

[note: 42]Day 18 at Page 52 and 53, PW 59 Dr Tay Ming Kiong, XXN by Knight at lines 16 to 32, and 1 to 11 respectively.

note: 43]Day 17 at Page 48, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 21 to 32.

[note: 44]Day 17 at Page 59, PW 59 Dr Tay Ming Kiong, XN by Tan at lines 16 to 24.

[note: 45]Meera-35

[note: 46]Meera-18

[note: 47]Day 18 at Page 73, PW60 Ang Hwee Cheng, XN by Tan at lines 3 to 16.

[note: 48]Day 20 at Page 50, PW68 Tan Pang Tong, XN by Tan at lines 8 and 9.

[note: 49]Day 18 at Page 73, PW60 Ang Hwee Cheng, XN by Tan at line 23.

[note: 50]Day 18 at Page 84, PW60 Ang Hwee Cheng, XN by Tan at line 29.

[note: 51]Day 16 at Page 18, PW43 Dr Tan Peng Hui XXN by Knight at lines 6 to 23.

[note: 52]Day 23 at Page 100, 1TDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 20 to 30.

[note: 53]Dat 23 at Page 100, 1TDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 5 to 11.

[note: 54]Day 22 at Page 5, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 15 to 18.

[note: 55]Day 22 at Page 12, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 20 and 21.

[note: 56]Day 22 at Page 12, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 25 and 26.

[note: 57]Day 22 at Page 21, 1TPW1 Ang Bee Chin, RXN by Khoo at line 13.

[note: 58]Day 22 at Page 21, 1TPW1 Ang Bee Chin, Questions by the Court at line 13.

[note: 59]Day 23 at Page 116, 1TDW1 Tharema s/o Govindasamy XN by Radakrishnan at line 7.

[note: 60]Day 22 at Page 13, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 13 and 16. see also, Day 22 at Page 18 at lines 14 to 31.

[note: 61]See generally, Day 24, 1TDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 8 to 10.

[note: 62]Day 22 at Page 84, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 11 and 12.

[note: 63]See Letter dated 16th October 2008 by Dr Lim Jeng Min to the High Court.

[note: 64]Day 22 at Page 73, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at line 29. see Page 74 at lines 10 to 16 today.

[note: 65]See for example, Day 24 at Page 16, ITDW1 Tharema s/o Govindasamy XN by Radakrishnan at lines 27 to 29.

[note: 66]Day 22 at Page 84, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at line 8.

[note: 67]Day 22 at Page 81, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 20 and 22.

[note: 68]Day 24 at Page 3, ITDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 14 to 18.

[note: 69]Day 22 at Page 85, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 11 to 14.

[note: 70]Day 22 at Page 86, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 21 to 24.

[note: 71]Day 22 at Page 102, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 8 to 10.

[note: 72]Day 24 at Page 19, ITDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 16 to 20.

[note: 73]Day 22 at Page 49, ITPW2 Cindy New Lay Peng, XN by Khoo at line 6.

[note: 74]Day 22 at Page 103, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 2 and 3.

[note: 75]Day 24 at Page 29, ITDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 15 to 21.

[note: 76]Day 24 at Page 26, ITDW1 Tharema Vejayan s/o Govindasamy XN by Radakrishnan at lines 6 to 15.

[note: 77]Day 23 at Page 84, 1TPW4 Ravindra s/o Subramaniam, XXN by Radakrishnan at lines 19 to 23; see also Page 83 at lines 2 to 7.

[note: 78]Day 23 at Page 51, ITPW3 B Jeyaletchumi XXN by Radakrishnan at lines 2 to 15.

[note: 79]Day 22 at Page 2, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 3 to 6.

[note: 80]Day 22 at Page 2, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 13 to 18.

[note: 81]Day 22 at Page 3, 1TPW1 Ang Bee Chin, XXN by Radakrishnan at lines 13 to 17.

[note: 82]Day 22 at Page 33, ITPW2 Cindy New Lay Peng, XN by Khoo at lines 18 to 25.

[note: 83]Day 22 at Page 73, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at line 29. see Page 74 at lines 1 to 6 today.

[note: 84]Day 22 at Page 34, ITPW2 Cindy New Lay Peng, XN by Khoo at lines 4. See also, Day 22 at Page 80, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 5 to 9.

[note: 85]Day 22 at Page 63, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at lines 26 to 28.

[note: 86]Day 22 at Page 39, ITPW2 Cindy New Lay Peng, XN by Khoo at lines 5 to 9.

[note: 87]Day 22 at Page 39, ITPW2 Cindy New Lay Peng, XN by Khoo at lines 15 to 25.

[note: 88]Day 22 at Page 58, ITPW2 Cindy New Lay Peng, XN by Khoo at lines 12 to 31.

[note: 89]Day 22 at Page 99, ITPW2 Cindy New Lay Peng, XXN by Radakrishnan at line 23.

[note: 90]Day 27 at Page 64, DW1 Tharema, XXN by Khoo at lines 26 to 32.

[note: 91]Day 27 at Page 66, DW1 Tharema, XXN by Khoo at lines 1 to 6.

[note: 92]Day 27 at Page 68, DW1 Tharema, XXN by Khoo at lines 2 to 11.

[note: 93]Day 27 at Page 69, DW1 Tharema, XXN by Khoo at lines 15 to 19.

[note: 94]Day 27 at Page 69, DW1 Tharema, XXN by Khoo at lines 29 to 32.

[note: 95]Day 26 at Pages 17 and 18, DW1 Tharema, XN by Radakrishnan at lines 27 to 32 and 1 to 10 respectively.

[note: 96]Day 26 at Page 21, DW1 Tharema, XN by Radakrishnan at lines 6 to 10.

[note: 97]Day 29 at Page 40, DW2 Tommy Tan, XXN by Khoo at lines 1 to 14.

[note: 98]Day 29 at Page 35, DW2 Tommy Tan, XXN by Khoo at lines 22 to 27.

[note: 99]Day 29 at Page 36, DW2 Tommy Tan Kay Seng, XXN by Khoo at lines 3 to 23.

[note: 100]Day 30 at Page 84, Submissions by Radakrishnan at lines 4 and 5.

[note: 101]Meera-35

[note: 102]Day 30 at Page 87, Submission by Radakrishnan at lines 3 to 9.