18 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 35 of 1976

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL IN THE REPUBLIC OF SINGAPORE

BETWEEN :

MOHAMED KUNJO S/O RAMALAN — Appellant

- and -

THE PUBLIC PROSECUTOR — Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal in forma pauperis by special leave from a Judgment of the Court of Criminal Appeal in Singapore (Wee Chong Jin, C.J., Choor Singh, and Kulasekaram, JJ.), dated the 12th August 1976 which dismissed the Appellant's appeal against conviction for murder and sentence of death in the High Court, Singapore (Chua, and D'Cotta, JJ.) on 11th February 1976. pp.443-4 pp.429-441 pp.411

2. The Appellant was charged as follows : that on or about the 25th day of May 1975, at about 8.50 p.m. in front of No. 10, Pulau Saigon Road, Singapore, he did commit murder by causing the death of one Arunmugam Arunachalam, and thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103). p.2

3. The Trial took place in the Supreme Court in Singapore (Chua J. and D.'Cotta J.) between the 26th January and the 11th February, 1976. The Prosecution called material evidence to the following effect :-

(a) Doctor Seah Han Cheow said that in performing an autopsy on the deceased, Arunmugam Arunachalam, he recorded external injuries in six places : pp.4-172 pp.447-8

(1) a laceration 3 cm long at the left anterior parietal region, that is the region above the left ear. This injury, he said, was caused by a violent blow from a blunt object. p.7.LL.34-6 p.8.LL.5-6

(2) a laceration 3 cm long at the inner canthus of the left eye, that is the area between the bridge of the nose and the left eye.

p.8.LL.12-14

(3) a laceration 3½ cm long at the outer half of the left eye-brow. Injuries (2) and (3), Dr. Seah said, could have been caused by a violent blow from a blunt object or by fractured bone chips going inwards.

p.8.L.23
p.8.LL.28-31

(4) two ½ cm. lacerations, one on each lip, near the left angle of the mouth, caused by a blow from a blunt object.

p.9.LL.9-13

(5) a laceration 4 cm long on the left side of the chin. This was caused by a violent blow from a blunt object.

p.9.L.16
p.9.LL.19-20

(6) a bruise on the dorsum, that is back, of the right hand which Dr. Seah described as a defence wound, caused by a blow from a blunt object while the victim was trying to cover himself.

p.9.LL.22-30

Dr. Seah referred to two further external injuries: to heavy bruising of the left eye socket, which could have been caused by a blow on the left eye or fractured bone chips; and to blood clots in the ears due to a fractured skull.

p.9.LL.35-7
p.9.L.35 - p.10.LL.1-2

Dr. Seah agreed that injuries 1, 2, 3, 5 and 6 could have been caused by an exhaust pipe produced in evidence (exhibit p.42).

p.10.LL.24-6

As to internal injuries on the skull, Dr. Seah found:

(1) comminuted fractures involving the left half of the frontal bone, that is the bone on the left side of the forehead.

p.11.LL.2-22

(2) comminuted fractures involving both temporal bones.

p.11.LL.24-7

(3) a fracture line across the base of the skull. This injury extended from the right petrous temporal bone to the left eye socket. (In the course of Dr. Seah's evidence these three internal injuries to the skull are called respectively fracture (1), fracture (2) and fracture (3)).

p.12.LL.5-9

RECORD

He concluded from the fracture pattern that there were three blows: one to the left side of the forehead, one to the right ear and one on the left ear. p.13.L.35 p.14.L.4

As to the brain; Dr. Seah found fresh subarachnoid haemorrhages at the temporal lobes of the brain. He linked this to fracture (2). He said that the fresh subarachnoid haemorrhages indicated that the victim was alive when he received the blows. He also referred to some old contusions from old injuries. p.14 LL.22-3 p.15 L 10 p.15. LL 14-15 p.14 LL 35-6

Dr. Seah said that the certified cause of death was fractured skull, and that any of the skull injuries would in the ordinary course of nature cause death. He said that the three fractures together would have caused death within 15 minutes. p.15 LL 18-19 p.15 LL 20-30 p.16 LL 17-18

Dr. Seah said that a blood specimen from the deceased was sent to the Government Chemists which subsequently submitted a report thereon (Exhibit p.29). p.19 L35 - p.20 L6 p.449

In cross-examination, Dr. Seah accepted that the blood alcohol content ("B.A.C.") of the deceased's blood was 400 mgs. of ethanol per 100 mls of blood. He accepted that in certain circumstances this level of intoxication could cause death. He acknowledged that alcohol in the blood reduces the capacity of the blood to clot, and that therefore serious haemorrhaging could follow a mild or moderate blow. Dr. Seah said that a person in that state was capable of purposeless acts of violence. p.21. LL 10-14 p.21.L.25 p.22. LL 8-31 p.22 L35 - p.23 L31 p.25 LL30-7

As to fracture (3), Dr. Seah agreed that the fracture line extended from the posterior fossa, through the middle fossa to the anterior fossa, but said that such a long fracture line was not consistent with a fall, unless it was a fall from a high building. A blow would require less force to cause such an injury than a fall from a height, since the area of contact in the former case would be small. Dr. Seah said that he would not necessarily expect a blow with a blunt object to cause a depressed fracture on the petrous temporal bone which is a hard, solid part of the bone. p.35 LL 19-22 p.38 LL 19-24 p.39 LL 10-11 p.39 LL 36-41 p.41 - LL - p.42 L29

As to fracture (2), that could not be linked to any laceration. It was quite common not to have any abrasions, bruising or lacerations when a blow was applied. Certain parts of the body, usually the ones covered with loose skin, were liable to exhibit external injuries. This would not apply to the area behind the ear which had a "cushion effect" and where, in p.54 LL 18-37 p.56 LL 12-13 p.61 LL 18-20

RECORD

p.65 L10 - p.66 L11 p.66 L21 - p.68 L2 p.68 LL 17-24 p.70 L 36 - p.71 L9 p.72 LL 5-8 p.74 LL 22-8 p.78 L 37

Dr. Seah's opinion, the point of impact was. From the absence of damage to the ear, it followed that the blows to both temporal bones - fracture (2) - were from the rear. It was likely that the victim was standing when he was hit. Dr. Seah acknowledged that laceration or abrasion would be expected if the tip of the weapon were used, but not, as in this case, where the flat side was used. Dr. Seah agreed that a bruise would be more marked on a living person than on a dead person. A person already in a high state of intoxication would be more liable to die after a knock of the ground.

p.80 LL 30-31 p.81 L.41 - p.82 L.16

When asked about fracture (1) - the blow to the forehead - Dr. Seah said that death would result from such a blow after 3 or 4 hours if there was a brain damage. As there was no brain damage or bleeding associated with this fracture, the only conclusion was that the deceased was already dead when this blow was struck.

p.82 LL 23-31 p.8 3 LL 1-2

This was not true of fracture (2) because of the fresh haemorrhaging, although Dr. Seah, taking into account the intoxication, accepted the possibility that the haemorrhaging could have been caused by a fall.

p.84 LL 1-16

There was a possibility, further, that the haemorrhaging was independent of the fractures involved in fracture (2). If that were so, it was possible that these fractures would not alone cause death, though equally they could do so.

p.84 L.28 p.87 LL 18-26 p.87 L 27-33

Similarly, with fracture (3), there was a chance of survival if there was no associated haemorrgaging or complications. He accepted that there was possibility therefore that the haemorrhaging caused death, and so it was a possibility that all three sets of fractures could have been inflicted after death.

p.99 L 19 - p.100 L1 p.100 LL 19-20

Dr. Seah said that external injury (6) could have been caused after fracture (1), and therefore was also possibly post mortem. External injuries (1), (2) and (3) were associated with this first fracture (fracture (1)).

p.103 L.28 - p.104 L.13 p.110 LL 6-8 p.109 LL 35-7

Dr. Seah agreed that a fall could have caused a fissure fracture such as that in fracture (3) but not a comminuted fracture of the petrous temporal bone. The doctor explained that the line fracture in fracture (3) concerned the petrous temporal bone, while the fractures in fracture (2) concerned the whole temporal bones.

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He accepted that a hard blow to the left eye while the deceased was on the ground could have caused comminuted fractures to the right petrous temporal bone, because of the reaction of the force coming from the ground. The doctor accepted the possibility that a fall of the left back of the head could have resulted in a comminuted and line fracture of the petrous temporal bone, left side. Further, there was a slight possibility that the line fracture could be "exaggerated into" a comminuted fracture by a very severe blow, - Therefore, Dr. Seah accepted as a possibility that the deceased could have fallen and received a line fracture, and then a single blow could have caused the three fractures. This blow was most probably post-mortem. He could not be certain about that because if death resulted a few seconds later there would be no chance of haemorrhaging, but it would be exceptional to have no haemorrhaging if the victim were still alive. He said death was possibly due to acute alcoholic intoxication. As to certifying cause of death, both the fractures and the acute alcoholic intoxication were possible, but that death was "most probably from fractures".

p.125.LL.7-17
p.125. LL.27-36
p.125 L.37 - p.126 L.4
p.126 LL.32-9
p.129.LL.2-6
p.136.LL.11-14
p.142 LL.33-5
pp.131-133 and 144
p.146 L.33 - p.147 L.1
p.147.L.9

In re-examination, - Dr. Seah said that the tolerance level of a habitual drinker is increased, and the likelihood of death is decreased.

p.151.LL.15-18
p.151.LL.35-9

He said (referring to fracture (3)) that the possibility of sustaining a comminuted fracture of the petrous temporal bone from a fall was "very slight". It was clearly not possible (referring to fracture (2)) to produce the comminuted fractures of both temporal bones from a single fall.

p.154.LL.1-5
p.154 LL.14-16

The doctor said that the reasons why there might be no external injuries from a blow with an exhaust pipe were : that the victim may have died soon after sustaining the injury; that many people have thick and strong skin there, and if there was hair there as well, that would have a cushion effect. He was not at all surprised to find no external injury.

p.155.LL.14-30
p.156 L.38 - p.157 L.20

He explained that when he had said that fracture (2) had been inflicted from the back, he had meant the back of the head, not the back of the body, and the assailant could have been either in front or at the side of the deceased.

p.156 L.38
p.157 L.20

In relation to fracture (2), he concluded that the fractures and the haemorrhaging had been caused by the same blow.

p.157 L.42 - p.158 L.1

As to the bruising of the back of the hand (6), it was most likely that that was inflicted while the deceased was still alive.

p.159.LL.6-13

RECORD

p.160.LL.2-19

Dr. Seah said that there was less chance of a comminuted fracture of the right temporal bone from a blow on the left eye if the head was resting on sand, and that it was unlikely that the left petrous temporal bone would sustain a comminuted fracture from such a blow.

p.160.L.29 - p.161.L.19
p.161.L.30 - p.162.L.18

As to the possibility of death from alcoholic intoxication, the doctor said that most victims have a period of coma of between half an hour and several hours before death. It would be unusual for a person just to collapse and die, and it would be more unlikely if that person were a habitual drinker.

p.165.LL.17-20
p.168.LL.12-22

Dr. Seah said that after receiving the chemist's report he would still certify cause of death as fractured skull.

p.168.LL.30-31

In answer to questions by the Court, death was most probably from the two blows at the temporal bones (fracture (2)) and would occur in less than 15 minutes.

pp.173-198
p.173.L.15
Ex.P30
p.450
p.174.L.8
p.174.LL.26-28
p.175 L17
p.175.LL.26-9
p.175.L.36
p.176.LL.4-14
p.176.LL.15-17
p.178.L.8 - p.179.L.6

(b) Doctor V. Gandhimuthu said that he had seen the Appellant at 2.30 a.m. on 26th May, 1975 and had prepared a report on him : (exhibit P30). He said that the Appellant had an unsteady, staggering gait, and put this down to alcoholic intoxication, fatigue and tiredness. He did not think that it was due to the Appellant's age, which was 54 years. The Appellant was suffering from sub-conjunctival haemorrhage, that is redness of the white of the eye. This was consistent with a blow from a blunt object such as a fist. There was also an abrasion 5" x 1" on the back of his right forearm which was possibly caused by a fall. His blood contained 100 mg. of alcohol per 100 ml of blood. The doctor and the Appellant could understand each other, and the Appellant was speaking quite clearly.

p.180.LL.20-4
p.181.LL.22-3
p.182.L.24

In cross-examination, Dr. Gandhimuthu said that the Appellant was swinging from side to side when he came into the office: he acknowledged that he did not take the blood sample until 2.45 a.m. to 2.50 a.m. He said that the average rate of detoxification was 15 mg. per hour, so at that rate, if the incident had taken place 6 hours earlier, the B.A.C. would then have been about 190 mg.

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(c) Thangavelluv Maniam, a detective attached to the Special Investigation Section of the C.I.D., said that he left the scene of the incident at about 12.05 a.m. on 26th May, 1975, located the Appellant and brought him to the police station at about 12.15 a.m. He cautioned the Appellant who remained silent. The Appellant appeared emotionally upset.

pp.198-207
p.199.L.29
p.200.L.40
p.205.LL.10-18
p.206.L.6

(d) Tan Chwee Siong, the employer of the deceased and the Appellant, said that he approached them with intention of asking them to load some timber on to a lorry. But when he was near, he noticed that they smelt of alcohol, so he did not ask them after all. He told them to go and sleep. He went back to his office; both the deceased and the Appellant came to the office in a very intoxicated state to ask whether they could load the timber the following morning. He left the office shortly after that at about 8 p.m.

pp.208-222
p.208.LL.21-22
p.208.LL.28-9
p.208.L.31
p.209.LL.18-19
p.209.LL.4-6

In cross-examination he said that the Appellant and the deceased were good friends as far as he knew, though they occasionally got drunk and had arguments. He did not see that they were arguing when he first went up to them. When they came into his office, they were unsteady on their feet, were slurring their speech, and were swerving from side to side.

p.213.L.33
p.214.LL.3-4
p.214.LL.10-11
p.215.LL.29-38

In re-examination Mr. Tan said that he could not remember if one or both of them spoke.

p.221.LL.17-21

(e) Phasaram Misa, aged 16, said that at about 8 p.m. on 25th May 1975 he saw the deceased and the Appellant sitting on top of some planks, talking. At about 8.15 p.m., he heard them laughing and talking loudly. At about 8.30 p.m. he heard them arguing. They got off the sacks, fell to the ground, wrestled, got up and fell down again several times. They were punching each other. Suddenly the Appellant ran towards his store at the back of a lorry, and came back holding an exhaust pipe (Exhibit p.42). The deceased tried to defend himself with both his hands, but he failed and fell to the ground. The deceased fell on to his back. Misa could not see in which direction his head was facing because it was too dark. The Appellant walked a few paces to the deceased's left side. He hit the deceased on the head 3 or 4 times. Then he threw the pipe away and walked towards his store. It was about 50 feet to the lorry from where the deceased fell. It was quite dark where the Appellant and the deceased were.

pp.223-268
p.224.L.30 - p.225.L.8
p.228.LL.9-10
p.228.L.31
p.229.LL.1-21
p.229.LL.28-9
p.229.LL.31-5
p.230.LL.27-30
p.231.LL.2-9
p.232.LL.1-8
p.232.LL.9-16
p.232.LL.17-20
p.233.LL.3-6
p.234.LL.14-16

RECORD

p.238.LL.3-5
p.238.LL.26-34
p.241.LL.22-6
p.245.LL.22-5
p.245.LL.39-40
p.249.LL.5-10
p.249.LL.13-14
p.250.L.6
p.251.LL.28-9
p.252.LL.15-19
p.254.L40
p.255.L.17
p.256.L.31
p.260.LL.7-11
p.262.L.34 - p.263.L.35

In cross-examination, Misa said that the Appellant and the deceased were at an angle behind him and to the left as he was sitting, but that he could see them clearly by turning his head. Saeroen bin Rakiman (the next witness to be called) was sitting on his left, virtually facing him. He said that when he first heard the deceased and the Appellant talking, their voices were steady. They were then talking loudly rather than shouting. When they were wrestling with each other, he agreed that they were laughing and shouting very loudly, and that they were staggering and swaying from side to side. He agreed that they were behaving as if they were drunk. They were not using direct punches. They appeared to be playing around. Misa said that when the Appellant ran towards his store he did not stagger; he was quite steady. He thought it took about 45 seconds from the time the Appellant left the deceased until the time he returned. The deceased meanwhile was standing unsteadily. Misa thought that the first blow was on the left forehead. He could not see whether the blows delivered to the deceased while he was on the ground actually hit the head though they were in the direction of the head. He repeatedly denied that the deceased was already on the ground when the Appellant returned with the exhaust pipe.

pp.269-305
p.269.LL.16-17
p.276.L.38 - p.277.L.1
p.277.LL.2-7
p.239.L.40 - p.280.L.3
p.280.LL.15-17
p.280.LL.29-30
p.281.L.7
p.282.LL.7-15
p.282.LL.24-5
p.283.L.35 - p.284.L.6
p.284.LL.24-5
p.285.LL.1-2
p.285.LL.41-2
p.290.LL.8-10

(f) Saeroen Bin Rakiman, a night watchman and casual labourer by day, said he was 76 years old, and his eyesight was not very good. He said he first saw the Appellant and the deceased through the window of his store at about 6.30 p.m. when they were chasing each other. When he left his store at about 7 p.m. they were still chasing each other. Between 7 p.m. and 8 p.m. they were wrestling, he said. He said the deceased fell down on his own: he was not thrown. It was after this that the Appellant moved off in the direction of his store. When the Appellant returned, the deceased was lying motionless. Saeroen said that when the fall took place, he and Misa were standing. He thought that the deceased fell to the ground some time after 8 p.m. This was the first time that the deceased had fallen and the Appellant had not fallen at all. He said that the deceased fell backwards with his head facing to the right. Before the deceased fell, the Appellant was to the left of the deceased about one yard away. The deceased fell as soon as the Appellant had released his grip. The deceased fell backwards about one yard. The

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Appellant was then about one yard from the foot of the deceased. When the Appellant went off in the direction of his store, he was swaying about. The time that he was away from the deceased was more or less 5 minutes. When he returned he was swaying about and he struck the head of the deceased 4 times. He was standing on the right hand side of the deceased. Saeroen thought that the deceased's head was facing to the left. The first blow, he said, landed on the right temple of the deceased. He said he could not see very well because of the glare of the light. When the blows were being struck, Saeroen said he was still seated. After the first blow landed, he said that he did not pay any attention because the Appellant was drunk. He estimated that he was 6 to 7 yards from the deceased and the Appellant at this time. He said that he, Saeroen, was good friends with the Appellant and that they never quarrelled.

p.290.LL.20-2
p.291.LL.29-30
p.293.L.19
p.294.LL.15-18
p.294.L.30
p.294.L.40
p.296.LL.4-10
p.296.LL.34-5
p.297.LL.36-37
p.298.L.36 - p.299.L.6
p.299.LL.7-9
p.301.LL.2-3

4. The Appellant had made a cautioned statement (exhibit P.40) on 26th May, 1975 at 1.50 p.m. as follows:

Exhibit 40
p.453.LL.5-11

"The fight started because I told Arunmugam not to drink when he drove lorries. He got angry and punched me on the eye. He also used a wood to hit me on my left hand. I got angry and hit him back. I do not remember with what I hit him. I had no intention to kill him. I did not know he will die. That's all".

5. (a) At the Trial, the Appellant made a statement from the dock as follows:

p.306.L.12 - p.307.L.19

"On the day in question I woke up at 10.00 a.m. I went to a nearby toddy shop and consumed 5 pints of toddy. I felt tipsy and returned to my store and slept. I woke up at about 4 p.m. and went to a Chinese coffee shop to drink beer. When I reached the coffee shop I saw Arunmugam, the deceased, drinking beer. I bought a bottle of beer sorry, I bought two big bottles of beer and two small bottles of Chinese samsu. Both myself and the deceased drank from the bottles. Both of us then left to buy some food from another shop, and returned to the same coffee shop. We again bought a small amount of samsu each and took the two small bottles of samsu to the store. At the store we were eating and drinking samsu and at that time our employer, our towkay arrived and told us to do some work. I told my employer I was feeling drowsy and dizzy because I had taken some beer and samsu, but I would do the job on the following day. My employer then left the scene and we continued to eat and drink. While we were doing so, I told the deceased that he had to drive the lorry the following day and he should not drink much. The deceased said it was his own business to drink and then he punched me on my right eye. Subsequently I remember vaguely of having wrestling and pushing with each other.

I remember also vaguely that both of us were rolling on the ground. I don't remember having hit the deceased and even if I did I don't know with what I hit him. He was my best friend, and I had helped him to get the job for him. I had no intention of killing him and I don't remember anything else. That is all".

pp.307-409

(b) Doctor Paul William Ngui, a consultant psychiatrist, said that he had examined the Appellant on the 22nd and 23rd January, 1976 and had prepared a report. (Exhibit D.10). The report stated that the Appellant's alcoholic consumption had risen from 1 to 5 glasses of toddy a day. There were signs of addiction and amnesic periods. The Appellant's hands showed tremors. A psychiatric examination disclosed no psychotic symptoms. He was depressed and remorseful at having killed his friend.

Exhibit D.10
pp.457-462
p.309.LL.22-5
p.309.LL.33-5
p.309.LL.43-5
p.310.LL.3-5
p.310.LL.15-16
p.310.LL.16-19

Dr. Ngui formed the opinion that the Appellant was suffering from chronic alcoholism which contributed to a mild impairment of his memory function. His previous personality was introverted and depressive.

p.310.LL.32-8

As to the events of the 25th May, Dr. Ngui estimated from the Appellant's B.A.C. at 2.30 a.m. that his B.A.C. at the time of the offence would have been between 188 and 210 mg of alcohol per 100 ml. of blood, depending on the amount of exercise he had taken after leaving the scene. The symptoms displayed by the Appellant showed that the basal centres of the brain were being overcome. His mood would be in a state of confusion. Thinking would be slowed down and would be incoherent. Amnesia would commonly follow. The Appellant's recollection was hazy: he thought that the day in question was Saturday 15th March. Dr. Ngui thought the blow which the Appellant had received on the eye caused a minor concussion which precipitated an abnormal fear reaction or rage reaction. The doctor concluded that the Appellant was in a confused state of mind due to alcoholic intoxication, so as to be incapable of forming the necessary intent to commit the offence. Further, he thought that the abnormal fear or rage reaction impaired the Appellant responsibility for his actions.

p.313.LL.7-10
p.315.LL.7-15
p.315.LL.18-21
p.315.LL.34-6
p.317.LL.11-14
p.317.LL.16-18

In cross-examination, Dr. Ngui accepted that it was possible that the tremors were due to age,

nervousness or tension. The Appellant showed no symptoms of a diseased liver. The Appellant did not suffer from delirium tremens or polyneuritis and was in physically good health. The doctor acknowledged that for the Appellant's drinking pattern he had had to rely entirely on the Appellant. He said that he had formed the opinion that the Appellant was a chronic alcoholic from the single psychological change of the Appellant's loss of memory and the single physical effect of the fine tremors. He conceded that small quantities of alcohol could have induced a mild impairment of the Appellant's memory. He pointed out that the Appellant's actions on 25th May were not actually related to chronic alcoholism but to the "acute alcoholism of having over 200 mg of alcohol per 100 ml. of blood. He accepted that the "concussion" from the punch on the eye was only an inference. He also accepted that the Appellant's confusion over the events of the 25th May could have been because the doctor's examination was 8 months later. He agreed that the figure of 200 mg. was not absolute, and that if the Appellant had taken alcohol at 8.30 p.m. the peak of the B.A.C. would not be reached probably until 9.30 p.m.

p.321 p.7 and p.323.LL.8-17
p.323.L.39-p.324.L.32
p.327.LL.21-35
p.328.LL.31-5
p.349.LL.17-20
p.349.LL.21-2
p.351.L.37-p.352.L.1
p.353.LL.14-31
p.356.LL.25-31
p.359.LL.9-15
p.384.LL.21-5

6. On 11th February, 1976 the learned trial Judges delivered in short their findings. They accepted the evidence of Phasaram Misa as to what took place on the night in question, and found that when the first blow was delivered by the Appellant, the deceased was standing. They continued:

p.411
p.411.LL.8-9
p.441.LL.15-16
p.411.LL.19-33

"We reject the defence contention that the deceased was already dead when those blows were delivered. We find the cause of death was fractured skull.

We find that the accused was not in a confused state of mind due to alcoholic intoxication so as to be incapable of forming the intention of causing bodily injuries to the deceased. The evidence clearly shows that the accused had the intention of causing bodily injuries to the deceased which resulted in his death and that the bodily injuries were sufficient in the ordinary course of nature to cause death".

7. The learned trial judges delivered written grounds of Decision on the 12th March 1976. They summarised the evidence. In the course of so doing, they commented on Saeroen's evidence as follows:

pp.413-422
p.413-p.419.L.26

"His evidence taken as a whole was difficult to follow. We were of the view that his evidence was unreliable".

p.417.LL.36-7

In rejecting the proposition that the Appellant was so severely intoxicated as to be incapable of forming the

necessary intention, they based their opinion on two main factors:

1) the clear memory of the Appellant up to the
p.417.LL.36-7 time he was punched on the eye;

2) the conduct of the Appellant immediately prior to the killing. This included running fifty feet to the store, ignoring two other weapons more readily at hand, running back and delivering a number of blows to the head.

p.420.LL.10-17 Commenting on Dr. Ngui's evidence, they said that there was no evidence on which to form the opinion that the Appellant was a chronic alcoholic: the only basis of the doctor's opinion was the Appellant's drinking pattern which had come from the Appellant himself. No evidence had been adduced by the Appellant before the court as to his alcoholic history.

They found that the doctor's opinion that the Appellant was too intoxicated on the night in question
p.421.LL.21-23 was based on the blood alcoholic content of the Appellant and the evidence of the witnesses. As regards the
p.421.LL.24-41 former, the learned judges found that calculating the B.A.C. backwards was "very unsatisfactory", and the figures given "not very reliable". The tolerance of alcohol varied from person to person, and increased in
p.421.L.42 - the case of a habitual drinker like the Appellant. As
p.422.L.7 to the latter, the doctor placed great weight on the evidence of Saeroen which the learned judges did not.

p.412 8. The Appellant appealed to the Court of Criminal Appeal, Singapore. The grounds of Appeal were set out
p.423-429.L.19 in full in a Petition of Appeal.

9. The Court of Criminal Appeal, Singapore (Wee C.J.,) Choor Singh, and Kulasekaram, JJ), delivered their
p.430-441.L.24 Judgment on the 12th August 1976, dismissing the Appellant's appeal.

pp.430-433.L.38 10. After summarising the evidence and the findings of
pp.433.L.39 - the trial judges, the learned judges of Appeal dealt
p.434.L.16 with the first submission, namely that there was no
p.434.LL.19-21 satisfactory evidence as to cause of death. They
p.434.L.34 - reviewed extensively the evidence of Misa and Saeroen
p.437.L.32 in relation to this. They found that Dr. Seah was
p.437.L.32 clearly in error in coming to the conclusion that the

RECORD

injury to the left forehead was a post mortem injury. Such a conclusion, they said, did not follow from the fact that there was no brain damage or internal bleeding. Misa's contradictory evidence was supported, first, by the injury to the right hand and, secondly, by the two lacerations around the left eye. Taking into consideration this medical evidence, together with the witness's demeanour by which the trial judges could assess his credibility, the trial judges were clearly justified in preferring Misa's Evidence to that of Saeroen. p.437.LL.33-6 p.437.L.39 - p.438.L.10 p.438.LL.11-17

Fractured skull, alcoholic intoxication and suberachnoid haemorrhage were all canvassed at the trial as possible causes of death, but Dr. Seah, while conceding that the other two were possible, "stuck to his opinion" that death was due to fractured skull. "Where there are a number of possibilities, it is eminently a matter for the trial judges to decide which is the most likely possibility. In this case the trial judges having heard the whole evidence, had the complete picture before them as it emerged from the totality of the evidence and in our opinion they were justified in accepting Dr. Seah's opinion". p.438.LL.38-45

11. The second submission was that there was sufficient evidence of drunkenness which rendered the Appellant incapable of forming the specific intent essential to constitute the offence of murder. The learned Appeal judges considered S86 (2) of the Penal Code, and cited with approval Broadhurst v. The Queen (1964 AC 441). The necessary intent was laid out in S.300 of the Penal Code. This case, they found, fell within s.300(c). The trial judges had to consider intoxication, which they had done. The learned Appeal judges found that the defence had rightly been rejected; it was not enough that the Appellant had been drinking heavily. There was no evidence of his physical or mental facilities being impaired to the extent of affecting his intent, or of defect in speech or movement. In fact the evidence was that he had run 50 feet to collect a drain-pipe. The "irresistible inference" was that the Appellant knew what he was doing and that he had formed the specific intent under s.300(c). p.439.LL.3-7 p.439.LL.10-26 p.439.L.29 p.440.L.7 p.440.LL.8-15 p.440.LL.16-36 p.440.LL.39-42 p.440.L.42: p.441.L.2 p.441.LL.3-6 p.441.LL.9-15

12. The Appellant was granted special leave to appeal in forma pauperis to the Judicial Committee on the 9th day of December, 1976. The Petition in support of the application set out the two grounds relied on by the Appellant in the Court of Criminal Appeal, Singapore, and the further ground that pp.443-4

"the learned trial judges failed to consider the defence of sudden fight, which although not relied upon, arose upon the evidence".

13. In the course of argument in support of the Petition for special leave, Counsel for the Petitioner sought to rely upon the proposition that section 300(c) of the Penal Code required not only a specific intent to cause bodily injury sufficient in the ordinary course of nature to cause death but further proof of actual knowledge by the accused that such bodily injury was so sufficient. The Petitioner relied upon the case of Mohd. Yasin bin Hussin alias Rosli v. The Public Prosecutor (Privy Council Appeal No. 17 of 1975).

14. The Respondent respectfully submits that this Appeal should be dismissed. The Respondent submits that there was ample evidence before the trial judges applying the criminal standard of proof on which they could and did base their finding that death was due to fractured skull and that the other two possible causes of death, namely alcoholic intoxication and subarachnoid haemorrhage, in the light of the totality of the evidence, did not amount to more than possibilities.

15. It is respectfully submitted that the learned trial judges were fully justified in rejecting the defence that the Appellant was so drunk that he was incapable of forming the necessary intent. They were entitled to rely on the clear memory of the Appellant and his conduct immediately prior to the killing.

16. The Respondent respectfully submits that the learned trial judges were correct not to consider the defence of sudden fight. The defence of sudden fight is set out in Exception 4 to section 300 of the Penal Code: where applicable the defence has the effect of reducing the offence from murder to culpable homicide not amounting to murder. In order to bring a case within Exception 4 it is necessary to establish that the act was done (1) without premeditation, (2) in a sudden fight, (3) in the heat of passion, (4) upon a sudden quarrel, (5) without the offender taking undue advantage or without acting in a cruel or unusual manner. It is respectfully submitted that the defence was clearly excluded on the facts: neither the fight nor the quarrel was sudden, and undue advantage was taken by the Appellant, who attacked the unarmed deceased cruelly and/or in an unusual manner.

17. The Respondent respectfully submits that section 300(c) of the Penal Code does not require proof of actual knowledge by the accused that the bodily injury intended

to be inflicted is sufficient in the ordinary course of nature to cause death. It was clear on the evidence that the fractures (1) (2) and (3) either individually or taken together were sufficient in the ordinary course of nature to cause death. The finding by the trial Judges that the Appellant intended to cause the bodily injuries to the deceased which resulted in his death necessarily involved and included a finding that the Appellant intended to cause bodily injuries sufficient in the ordinary course of nature to cause death. The case of Mhd. Yasin bin Hussin alias Rosli v. The Public Prosecutor does not support the interpretation of section 300(c) contended for on behalf of the Appellant in argument on the Petition for special leave.

18. The Respondent respectfully submits that this Appeal should be dismissed and the Judgment of the Court of Criminal Appeal, Singapore should be affirmed for the following, among other,

REASONS

1. BECAUSE the learned trial Judges were entitled to find that death was due to fractured skull on the evidence before them applying the criminal standard of proof.

2. BECAUSE the learned trial judges in reaching their conclusions applied the correct criminal standard of proof.

3. BECAUSE the learned trial Judges were entitled to find that the Appellant was not so intoxicated as to be incapable of forming the specific intent under section 300(c) of the Penal Code.

4. BECAUSE the defence of sudden fight was not open to the Appellant on the facts, and therefore was rightly, in law, not considered.

5. BECAUSE the learned trial Judges correctly interpreted section 300(c) of the Penal Code and correctly applied the requirements of that section on the evidence.

6. BECAUSE of the other reasons set out in the Findings and Grounds of Decision of the learned trial Judges and in the Judgment of the Court of Criminal Appeal.

STUART N. McKINNON

No. 35 of 1976

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL IN THE REPUBLIC OF SINGAPORE

B E T W E E N :

MOHAMED KUNJO S/O RAMALAN — Appellant

- and -

THE PUBLIC PROSECUTOR — Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London WC2 3UL

Solicitors for the Respondent