1976, 3

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 17 of 1975

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL IN THE REPUBLIC OF SINGAPORE (APPELLATE JURISDICTION)

B E T W E E N:

MOHD YASIN bin HUSSIN @ ROSLI — Appellant

- and -

THE PUBLIC PROSECUTOR — Respondent

C A S E FOR THE A P P E L L A N T

Record

1. This Appeal is against conviction by special leave in forma pauperis dated the 14th May 1975. — p. 92

2. The substantial question raised by this Appeal is the proper construction to be given to S.300 (c) of the Penal Code (CAP.103).

3. The Appellant was charged jointly with one Hurun bin Ripin on the 4th March 1974 with murder punishable under S.302 of the Penal Code of Singapore (CAP.103). They were tried in the Supreme Court in Singapore (Winslow J., CHOOR SINGH, J.) At the conclusion of the trial Hurun bin Ripin was acquitted of the offence of murder but was convicted of robbery by night and sentenced to a term of imprisonment and to 12 strokes of the cane. The Appellant was convicted of the offence of murder and sentenced to death. — p. 1; p. 59; p. 61; p. 59; p. 61

4. The Appellant appealed to the Court of Criminal Appeal in the Republic of Singapore against his conviction. By his Petition of Appeal he claimed, inter alia, that the learned trial judges had erred in law and fact in holding that the Appellant had the requisite criminal intention to warrant a conviction under S.302 of the Penal Code (CAP.103). On the 4th November 1974 the Court of Criminal Appeal in the Republic of Singapore (Wee Chong Hin C.J., T. Kulasekaram J., Tan Ah Tah J.) dismissed the Appeal. — p. 79

5. The deceased, a 58 years old Chinese widow, was

Record

found floating in the sea about 200 yards from her home. She was clad in a blue striped Chinese blouse but naked below her waist. There were five button spaces on the blouse but only the top one remained as a half button. An autopsy was performed and the pathologist (Dr.Chao)
p.5-38 gave evidence. He listed 15 external injuries on the
p. 83 deceased, mainly consisting of bruising to the head and face, and bruising to the hips and knees. In his opinion the cause of death was a cardiac arrest following
p. 15 upon the sudden and painful fracture of 9 ribs. The
p. 12 cause of the fractured ribs was, in his opinion, compression from the front of the chest with some force, but without the infliction of external injury, consistent with someone sitting on the deceased's chest while the deceased was lying on the floor. He also stated that in
p. 13 his opinion the injuries to the ribs were sufficient in the ordinary course of nature to cause death independently
p. 20 of the external injuries, and that it was unlikely that the external injuries on their own would have caused death.

p. 3 6. The evidence against the Appellant consisted solely of a statement, which he had made before a Magistrate on the 10th February 1973, in which he admitted going to the deceased's house with the co-accused, Hurun bin Ripin, with the intention to commit robbery, admitted fighting
p. 4 with the deceased and raping her, but in which he denied having any intention of killing the deceased.

p. 55 7. The Appellant elected to make an unsworn statement
l.28 from the dock, which was inconsistent with his previous
p. 57 statement. He made no admission that he had raped the
l. 27 deceased but described only a struggle in the course of which she died.

8. The learned trial judges found the Appellant guilty of murder, as defined in the third limb of S.300 of the Penal Code, by the following reasoning, set out in their short oral judgment delivered at the conclusion of the
p.59 trial. They found beyond reasonable doubt that the injury, which caused the death of the deceased, was inflicted by the Appellant. They accepted Dr. Chao's evidence that the injury had been inflicted by the compression of the chest with some force and that the consequent fracture of 9 ribs was an injury sufficient to cause death in the ordinary course of nature, independently of other injuries to the deceased. On such evidence (and without further consideration) they stated that they had no doubt that the injury was intentionally caused, and was not accidental or otherwise unintentional. When considering the question of common intention, they stated that they were not satisfied beyond reasonable doubt that the Appellant's Co-accused was guilty of murder, for they could not rule out that the fatal injury had been caused by the Appellant in the course

of his desire to have sexual intercourse, namely in furtherance of the Appellant's intention to rape.

9. The learned trial judges stated in their Grounds of Decision that they found the Appellant an untruthful witness, repeated their finding that the Appellant was alone responsible for the fatal injury and repeated without elaboration their finding that the Appellant intended to inflict the injury in the pursuance of his intention to commit rape. p. 62

10. By their judgment, the Court of Appeal merely stated that while there was evidence to support an intention to commit rape, there was "sufficient evidence to support a finding that the Appellant also intended to inflict the fatal injury." No specific reference was made to any such evidence.

11. Culpable homicide is only murder if it is shown that the act falls within one of 4 definitions outlined in S.300 of the Penal Code. In particular S.300 (c) states as follows :-

"...culpable homicide is murder -

a).....

b).....

c) if it 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."

12. It is submitted that the prosecution must prove four elements in order to prove murder under S.300 (c). They must prove :

(1) a bodily injury;

(2) the nature of the injury;

(3) an intention to inflict that particular bodily injury;

(4) the injury so intended is sufficient in the ordinary course of nature to cause death.

It is submitted that the prosecution were able to prove elements (1) and (2) above but that there was no evidence before the court sufficient to support a finding as to what injury the Appellant intended to

inflict, and there was no evidence, alternatively no sufficient evidence that he intended to cause the fractured ribs. In the circumstances, elements (3) and (4) could not be determined. It would appear that at the trial and in the Court of Appeal the view was taken that if it was proved that the injury which was inflicted was sufficient in the ordinary course of nature to cause death, then it necessarily gave rise to the inference that such injury was intended. Such an approach, it is respectfully submitted, was erroneous.

13. Further it is submitted that where the cause of death is shock, due to one injury and others have been inflicted, a fortiori, it is almost impossible to safety infer a homicidal intention. It is submitted that the evidence was equivocal as to whether the Appellant intended the specific injury or some superficial injury, or as to whether it was accidental or otherwise unintentional.

14. By reason of the foregoing it is humbly submitted that this Appeal should be allowed and that the Judgment and Order of the Court of Criminal Appeal should be reversed, and the conviction and sentence of the Appellant be set aside for the following among other

R E A S O N S

(1) BECAUSE upon a true construction of S.300 (c) of the Penal Code it had to be proved that the Appellant had the specific intention to cause the fatal injury;

(2) BECAUSE there was no evidence alternatively no sufficient evidence upon which such a finding could be made;

(3) BECAUSE the trial Judges and the Court of Appeal erred in their construction of S.300 (c) of the Penal Code.

GEORGE NEWMAN

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Appellant

- and -

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CASE FOR THE APPELLANT

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