

1976, 3

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 17 of 1975

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O N A P P E A L

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

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B E T W E E N :

MOHD YASIN BIN HUSSIN @ ROSLI

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

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RECORD OF PROCEEDINGS

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1.

No. 17 of 1975

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 (APPELLATE JURISDICTION)

B E T W E E N :

MOHD YASIN BIN HUSSIN @ ROSLI

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

No. 1

In the Supreme  
Court in  
Singapore

CHARGE

SINGAPORE CRIMINAL CASE NO.18/73

No. 1

IN THE SUPREME COURT IN SINGAPORE

BEFORE THE HONOURABLE MR. JUSTICE A.V. WINSLOW  
AND THE HONOURABLE MR. JUSTICE CHOOR SINGH

Charge  
4th March,  
1974

PUBLIC PROSECUTOR

vs.

- 1. HURUN BIN RIFIN
- 2. MOHD. YASIN BIN HUSSIN @ ROSLI

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For the Republic	...	...	MR. PALA KRISHNAN
For Accused No. 1	...	...	MR. NATHAN ISAAC
For Accused No. 2	...	...	MR. GOPALAN RAMAN

BOTH ACCUSED ARE CHARGED:

THAT YOU, (1) Hurun bin Ripin and (2) Mohd.  
Yasin bin Hussin @ Rosli, between 10.00 p.m.  
on the 22nd day of April, 1972 and 9.30 a.m.

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Charge  
4th March, 1974  
(continued)

on the 23rd day of April, 1972 at No.836-X, Pulau Ubin, Singapore, in furtherance of the common intention of both of you, committed murder by causing the death of one Poon Sai Im, and thereby committed an offence punishable under Section 302 read with section 34 of the Penal Code (Chapter 103).

(Both Accused claim trial).

D.P.P. delivers his opening address and calls:

No. 2

Transcript of Evidence before the Honourable Mr. Justice A. V. Winslow and the Honourable Mr. Justice Choor Singh  
Evidence for the Prosecution  
4th to 14th March 1974

Statement to Magistrate of ~~Harun bin Ripin (Part)~~  
*the Appellant*

No. 2

TRANSCRIPT OF EVIDENCE BEFORE THE HONOURABLE MR. JUSTICE A.V. WINSLOW AND THE HONOURABLE MR. JUSTICE CHOOR SINGH - 4th to 14th MARCH 1974.

EVIDENCE FOR THE PROSECTUION

Statement of <sup>Sayed</sup> ~~first~~ accused to magistrate

~~D.P.P.: "It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of what he said. Signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrates Court No.9. This document has been read, interpreted and explained by me in the Malay language to the accused who admitted it to be a true and correct statement. Signed Said bin Siswo, Sworn Interpreter, Magistrates' Courts. Date - 11th February, 1973. Time concluded: 9.56 p.m. Signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrate's Court No. 9."~~

My Lords, I shall read the statement made by Mohd. Yasin, P35 - "Memorandum of Inquiry. The accused Mohd. Yasin who is brought before me by Inspector Michael Won is now left alone with me and my sworn interpreter Mr. Said bin Siswo in the chambers of the 9th Magistrate's Court. The time is now 10.06 p.m. 11th February, 1973. I inform accused I am a Magistrate. Q. What language do you usually speak? A. Malay. Q. In what language do you wish to speak now?

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A. Malay. Q. Have you been examined by a Medical Officer before you were brought here?  
 A. Yes. Q. At what time were you examined?  
 A. I cannot remember the time. (I also inspect Medical report produced earlier by Inspector Michael Won). Q. What is your name? A. Mohamed Yasin bin Hussin. I am also known as Rosli.  
 Q. What is your race? A. Malay. Q. What is your address? A. I forget. Q. What is your occupation? A. Stevedore at Changi jetty.  
 Q. What is your age? A. 20 years. Q. On what charge have you been arrested? A. On the death of a woman at Pulau Ubin. Q. When were you arrested? A. Yesterday

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Transcript of Evidence before the Honourable Mr. Justice A. V. Winslow and the Honourable Mr. Justice Choor Singh

Evidence for the Prosecution  
 4th to 14th  
 March 1974

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~~Statement to Magistrate of Hurun bin Ripin (part)~~  
~~(continued)~~

~~Statement of second accused to magistrate~~

D.P.P.: "i.e. 10th February, 1973 at about 12.15 p.m.

Statement to Magistrate of the Appellant  
 (continued)

Q. Where were you arrested? A. At Changi jetty.  
 Q. Who arrested you? A. A police detective and another person. Q. In whose custody have you been since then? A. C.I.D. Q. Where have you been confined? A. At the C.I.D. Q. How long have you been confined? A. Since yesterday at about 12.15 p.m. Q. Why do you come here?  
 A. I want to admit to you that I am wrong. I caution accused that he is not obliged to make any statement to me if he does not wish to do so, but if he make any statement such statement may be used as evidence at his trial. Q. Do you understand this caution which I have just administered to you? A. Yes. Q. Do you still wish to make a statement? A. Yes. Q. When did you decide to make such a statement? A. Some time yesterday around 5.00 p.m. Q. In order to make you decide to make this statement has any police officer or person in authority made any (a) inducement, or (b) threat, or (c) promise?

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the Honourable  
Mr. Justice A.  
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the Honourable  
Mr. Justice  
Choor Singh

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the Prosecution  
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March 1974

Statement to  
Magistrate of  
the Appellant  
(continued)

A. No. I am here of my own accord. Q. Has any person assaulted you towards making this statement?

A. No. Q. Are you making this statement voluntarily? A. Yes. From this inquiry and from his demeanour generally I am satisfied that the accused is about to make a statement voluntarily.

Signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrate's Court No. 9. Q. What is it you want to say? A. I came here to admit that I was wrong. I had a meeting with two other friends, Hurun and Maarof. The discussion centred around going to a female Chinese house.

It was Hurun who asked Maarof whether he wanted to go. Maarof did not want to. When he asked me I told him I wanted to. I went to fetch a sampan at about 7.30 p.m. Hurun and I then went to the house of the female Chinese. The female Chinese was about to sleep when we arrived. Hurun and I circled the house. The female Chinese was silent and the lights were being dimmed. Hurun and I then looked for a spot where we could climb into the house. There was no entrance where I could enter. So I went to disturb the chickens at the chicken coop. The chickens made a lot of noise which woke up the female Chinese who came out with a small light. Immediately when she opened the door, Hurun jumped at her. The female Chinese at this stage shouted but her voice was faint. Hurun grabbed the female Chinese after which he asked me to grab hold of this woman. When I took over and grabbed this woman, Hurun entered the room. When I grabbed the woman she put up a fight. I had no intention of killing her. I just hit her. Whilst I was warding off her attacks, her trousers accidentally slipped off. When I saw this my desire was aroused. I then wanted to have sexual intercourse with her. Before I could start to play her she gave a blow at me. I warded it off. When my penis penetrated into her vagina she suddenly fell silent. After I had played her I pulled out my penis. The female Chinese was still quiet. Whilst I was doing all these Hurun was ransacking the room. When Hurun came out of the room he found nothing inside it. He then asked me to carry the woman into the sampan. After putting the body into the sampan we left the shore. I was rowing the sampan. Half way across Hurun suggested

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that we throw the woman into the sea. After doing so i.e. throwing the woman into the sea, I went back to the jetty. From the jetty Hurun and I went to Bedok for some food. After having some food Hurun asked me to follow him to Desker Road. He wanted to give me a treat. There I played another woman i.e. had sexual intercourse. From Desker Road Hurun asked me to go back to Changi. Then I went back to the motor boat where I slept. That is all. Q. Is that all you wish to say? A. Yes. This memorandum and the statement are read, interpreted and explained to the accused by my sworn interpreter. Q. Do you understand the statement just interpreted and explained to you? A. Yes I do. Q. Do you wish to make any alteration, corrections, additions or amendments? A. No. (Right thumb print of accused). Before me - signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrate's Court No. 9. Memorandum - I believe that this statement was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct and it contains a full and true account of what he said. Signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrate's Court No. 9. This document has been read, interpreted and explained by me in Malay to the accused who admitted it to be a true and correct statement. Signed Said bin Siswo, Sworn Interpreter, Magistrates' Courts. Date - 11th February, 1973. Time concluded: 11.05 p.m. Signed Syed Alwi bin Ahmad Alsree, Magistrate, Magistrate's Court No. 9." - that is Exhibit P35.

My Lords, my next witness for the prosecution now that the trial within a trial is over is Dr. Chao Tzee Cheng who is P.W.21. His deposition, my Lords, appears at page 9.

40 CHAO TZEE CHENG

(Examination-in-chief by D.P.P.) (Sworn in English)

Q. You are Chao Tzee Cheng?

A. Yes.

Q. You are a Consultant Forensic Pathologist attached to the Department of Pathology, Outram

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Transcript of Evidence before the Honourable Mr. Justice A. V. Winslow and the Honourable Mr. Justice Choor Singh

Evidence for the Prosecution 4th to 14th March 1974

Statement to Magistrate of the Appellant (continued)

Examination in Chief of Chao Tzee Cheng by D.P.P.

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the Honourable  
Mr. Justice  
Choor Singh

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March 1974

Examination in  
Chief of Chao  
Tzee Cheng by  
D.P.P.  
(continued)

Road General Hospital?

A. Yes.

Winslow J.: Could you go slower so that I  
can take it down?

D.P.P.: I shall, my Lord.

Q. Doctor, on 24th April, 1972 at about 9.30 a.m.  
you performed an autopsy on the body of a female  
Chinese identified to you as one Poon Sai Im by  
Inspector Syed Kadir Alsree?

A. Yes. 10

Q. Could you look at P10, the photograph, is  
that the deceased?

A. Yes, P10 shows the deceased.

Q. As a result of the autopsy, you put up a  
report?

A. Yes, I did - Autopsy Report No. 615/72  
refers.

D.P.P.: 615/72, my Lords, may the report be  
admitted and marked as P24? P24,  
my Lords, and this report shows the  
result of your autopsy? 20

A. Yes.

Q. Now doctor, what was the certified cause of  
death?

A. The cause of death was certified as multiple  
injuries.

Q. Now doctor, please have a look at the  
report - could you assist the Court by going  
through the post-mortem report in detail with  
reference to the photographs P10 to P17? 30

A. Yes.

Q. P10 to P17, the photographs?

A. My Lords, at post-mortem I found that the  
body was a well nourished Chinese female.

Q. Go a bit slowly, doctor, so that their Lordships can take it down?

A. She was clad only in a blue striped Chinese blouse.

Q. Yes, what else did you find on the blouse?

A. At the blouse there were 5 button spaces but only the top remained as a half button, the rest were torn away from their spaces with bare threads showing. There were no other tears present on the blouse. At the time of post-mortem I estimated the time of death had occurred at about 36 hours before the post-mortem, that is, around midnight on the 22nd April, 1972. On examination I found that there were multiple injuries which I listed under 15 headings in my report. The first one were multiple bruises over the whole forehead with small abrasion on the left side. This can be seen in photograph P10, my Lords.

Q. P10, my Lords, you are referring to the region on the forehead?

A. My Lords, the injuries really spread over the whole of the forehead as can be seen in the photograph. These injuries were consistent with being made by a blunt instrument repeatedly because it is spread all over the forehead. Injury No.2, my Lords, were multiple small bruises over the bridge of nose with small abrasions. This could be seen in photograph P10 also - over the bridge of the nose, my Lords. These were consistent with being made by repeated applications of a blunt instrument. No.3, haemorrhages in both eyes especially on the right side with bruises around the right eye. This can be seen also in P10, my Lords. These are consistent with being made by a blunt object such as fist blows on the eyes. No.4 were multiple small bruises and abrasions on the lower lip and chin with laceration on the right corner of lower lip. This can be seen in P10, my Lords - you can see around the mouth and chin there are a lot of bruises and abrasions. These are consistent with being made by blows to the mouth and chin region or by the application of a hand with force over the mouth as in the action of an attempt to stifle a cry or it could be a combination of such application of the hand over the mouth and assault on the mouth with a blunt object.

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(continued)

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Evidence for the Prosecution 4th to 14th March 1974

Examination in Chief of Chao Tzee Cheng by D.P.P.  
(continued)

Injury No.5, bruises on left chin can be seen in P10 also. These were consistent with being made by a blunt object. Injury No. 6 was a small irregular laceration 0.5 centimetres long on the left side of the upper neck; further down the left neck, on the lower neck, another smaller laceration - that could be seen in P.10 also, my Lords, the left side of the neck.

Winslow,J.: There are two lacerations?

A. Yes, one upper and one lower; it could be seen on the left side. 10

A. These are consistent with being made by a blunt object. Injury No.7 were small bruises on the lobe of the left ear, which may be seen quite faintly on the photograph, you can see the dark spots at the lobe of the ear. These are consistent with being caused by blunt objects, including a fist. No.8, my Lords, the right face appears swollen as compared with the left, this can be seen very clearly in the photograph. This is consistent with the right face being assaulted and swollen as a result of the assault. Injury No.9---

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Winslow,J.: These are --- Photograph P.10, there appears to be a black spot on the right?

A. Oh! that was a blood clot, a small bit of blood clot that could not be washed off, Yes. 30

Q. Was that a fresh one?

A. Blood, Yes, there were blood clots.

Winslow,J.: Consistent with a blow on the cheek?

A. No, this was on the outside. The blood clot is not on the ---but on the surface of the skin, so it may not be related to the injury. 40

Q. May not be related?

A. Yes.

Injury No. 9 were extensive bruising on the radial side of the right wrist, 7.5 centimetres, and the back of right hand at the base of index finger, which can be seen in---

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Q. P.16? Could you have a look at P.16?

A. P.16, Yes, my Lords, you can see that the right wrist, there was a bit of darkness here on the wrist and on the back of the hand.

Transcript of Evidence before the Honourable Mr. Justice A. V. Winslow and the Honourable Mr. Justice Choor Singh

Mr. Raman: Please say that again?

10 Witness: Here, you can see the dark discoloration here.

Evidence for the Prosecution 4th to 14th March 1974

These are bruises. My Lords, this injury is consistent with what we call a defensive injury, in other words the victim was putting up the hand and wrist to ward off blows and sustained such injuries. No.10 were multiple abrasions and bruises along the left forearm, wrist and the back of the left hand, shown in P.11, my Lords. This is clearly, shows clearly the scratches along the left forearm and bruises at the back of the left hand and wrist. This again is consistent with a defence injury. No. 11, my Lords, was a bruise and abrasions on the left hip with somewhat linear scratches, shown in P.11. That was on the left hip here, the scratches. This is consistent with being caused by a blunt instrument; the scratches were consistent with being in contact with a rough surface, such as in the case of contact with the rough surface of the ground. Injury No.12, my Lords, were a group of three rounded bruises about one centimetre in diameter on the inner side of the right knee, consistent with fingertip marks. This can be seen in photograph P.14.

Examination in Chief of Chao Tzee Cheng by D.P.P. (continued)

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D.P.P.: P.14 and 15, my Lords.

A. P.14, on the right knee, my Lords, you can see the bruises are rounded and grouped like fingertip marks on the knee. And No.13 was another group of four similar bruises on the inner side of the left knee, which is shown in P.15. Again, you can see the fingertip marks very clearly, my Lords. As I have said in my report, those two injuries, No.12 and 13, were consistent with fingertip marks, with the application on to the knees either in an attempt of forcing, you know, to attain the movement

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Chief of Chao  
Tzee Cheng by  
D.P.P.  
(continued)

of the knees or in an action of moving the thighs apart, application of force on the knees and moving the closed thighs apart. Injuries Nos. 14 and 15, my Lords, were abraded skins on both elbows, one of them was shown in P.12, the large black patch on the elbow. These, my Lords, Nos. 14 and 15, I have determined to be injuries made after death. This could be due to knocking into some stone or rocks while the body was at sea because the body was fished out from the sea.

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To recapitulate, my Lords, injuries were listed under 15 heads, of which 13 I have determined to be made during life and two were made after death. Injuries No. 1 to 8 were made on the head and neck region, injuries Nos. 9 and 10 were defence injuries, injury No. 11 was on the hip and 12 and 13 were fingertip marks on both knees.

Internally, page 2 of my report, my Lords, in the skeletal system I found there was no fracture of the skull but there was extensive bruising of the scalp on the forehead in relation to external injury No. 1. And on the ribs I found there were fractures of the left 2nd to the 5th rib, and right 2nd to the 6th rib, at mid-clavicle line anteriorly on both sides. In other words, mid-clavicle line, my Lords, is a point at the centre of the collarbone. So in other words, the fractured ribs were situated in front of the body in this manner, they were more or less in a straight line on either side, fracture of both sides of the ribs.

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Q. A total of nine broken ribs?

A. Yes, a total of nine, four on the left and five on the right side, with bruising of the pleura, of the membranes covering the lungs, and I concluded that the injury suggested compression on the front of the chest. In other words, the compression comes from in front of the chest. A point to note is, my Lords, there were no external injuries over the fractured ribs. In other words, externally on the chest there were no injuries, but internally I found this fracture of the ribs. There was no free blood, in other words there is no free blood flowing in the cavity but there was bruising on the pleura. This is consistent with, as I say, compression

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from in front, such as, you know, somebody was sitting on the chest with force. This is consistent because there were no external injuries, in other words the contact surface would be very strong and cause no injury but sufficient to cause fracture of nine ribs on the front of the chest.

10 In the brain, my Lords, there was no evidence of haemorrhage. In the neck region it only showed a haemorrhage at the right chin corresponding to the external injuries over the chin, No.4. Otherwise, there was no evidence of manual strangulation in this case. The heat was normal, the lungs were congested but not oedematous - oedema, my Lords, means that there was no excessive fluid in the lung. This is a significant finding, as I will relate later on. The stomach was empty, there was no fluid inside but only small remnants of rice. The other  
20 organs were congested.

In the genital system, I found that there were two small abrasions on the right side of the vaginal wall, near the entrance, small abrasions. This would signify some injury to the private part. I did vaginal smears which did not reveal any spermatozoa but I found diatomaceous material present. My Lords, the diatoms are really microscopic creatures, in fact they are between a plant and an animal which  
30 belong to the planktons---

D.P.P.: Food, sea food.

0 A. They are present normally in the sea and in ponds and they are the food of the fishes, and this can only be seen under the microscope. The presence of these diatoms in the vaginal wall signifies that the body has been in sea water for some time and sea water has seeped inside of the vagina and probably washed some of the vaginal contents, and the presence of these diatoms signifies that sea water has entered into the vagina because of long immersion in water. At the conclusion of the post-mortem I concluded that there was no evidence of drowning. As I have pointed out, the lungs did not have excessive fluid and the stomach was empty and I have concluded that death occurred before she was thrown into the water and that is why you have only the sea water washing in the vagina but were not inhaled or

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(continued)

ingested into the body, because if the person was alive when she entered the water she would be breathing and she would be inhaling and ingesting the water into her systems. And so the cause of death was certified as multiple injuries.

Q. Now, Doctor, could you have a look at P.13: there are some markings on---

A. Yes, my Lord, these were oil slicks on the legs of the woman - these are not injuries. The oil slicks signify that the body has gone through at least a patch where there was some oil, oil slicks around. That was not an injury. 10

Q. Doctor, looking through your post-mortem findings, first of all just have a look at the observation that you made with regard to the blouse, 5 button spaces in the blouse and only one top space remains with a half-button. Now could this have been consistent with a struggle?

A. Yes, as I have noted in my report, the rest of the buttons were torn away from the spaces - this would indicate a struggle. 20

Q. Coming down to the external injuries, Doctor, would you agree that most of the injuries were concentrated on the head and neck?

A. I have said so, my Lords, just now: injuries No. 1 to 8 were found around the head and the neck.

Q. Now the observations that you made with regard to the fractures that were found in the rib region, the various ribs that were fractured, now can this injury be caused by a person sitting down real hard on the top of the chest in a sort of bouncing manner? 30

A. Yes. As I say, the pressure points were more or less in a straight line on both sides; it is consistent with somebody sitting on the chest and causing the fracture this way.

Q. And the victim must be lying down?

A. Well, most likely because there must be pressure from the back to support the weight. But, most likely, to cause this injury the person was lying down on the floor. 40

Q. Doctor, can these injuries on the ribs be sufficient in the ordinary course of nature to cause death?

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A. Yes.

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Q. Independent of the other injuries?

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A. Yes---

Choor Singh, J.: The injury---

D.P.P.: The ribs, my Lord, I am asking whether independent of the other injuries

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Witness: The fracture of the ribs could independently cause death.

Winslow, J.: The fracture of the nine ribs?

A. Yes, the fracture of the nine ribs - in such a manner, the fracture of these ribs would in the ordinary course of nature cause death independently.

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(continued)

Q. Cause instant death, Doctor, would you comment?

A. Yes.

Winslow, J.: Independently?

A. Yes, of the other injuries my Lord - because of the sudden fracture, the pain and the shock the victim received, death could occur---

Choor Singh, J.: One minute: because of what?

A. Yes.

Winslow, J.: ---sudden pain and shock and fracture---

A. Pain and shock suffered, sudden, you know, with this sudden fracture of all nine ribs---

Choor Singh, J.: Because of sudden pain and shock suffered---

A. Yes, the victim could die.

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14.

Winslow, J.: Sudden fracture did you say?

A. Yes, Yes. You see, this is pain and shock on fracture of these ribs in a, at one and the same time, simultaneously; because the injuries are quite extensive the victim, as I say, could die instantaneously or within a short period afterwards, within the space of, well one or two minutes.

10

Q. Would you also take her age into consideration?

A. Yes.

Winslow, J.: This has something to do with the congestion of the lungs?

A. This would produce congestion, you see, because any injury to the chest would cause the body to react and one of the reactions is congestion. In other words, the lungs will be filled with blood, and these fractured ribs, in the sense I think, caused the congestion of the lungs.

20

Choor Sing, J.: Could you explain: you see the fracture, I mean what brought about the death? We know that there were nine ribs fractured simultaneously, all at the same time, due to compression which congested the lungs; and then what brought about the death, I mean resulted in the heart stopping, or she was suffocated, or what?

30

A. No, there are two mechanisms from fractured ribs: you can die, bleed and die from injury to the lungs and disturbance to the respiration, or the heart will stop.

Q. Let's get this down because we like to understand what happened.

40

A. Yes, my Lord, I will go slowly.

Q. These injuries to the chest, the

fracture of the nine ribs.

A. Yes, these injuries to the chest could cause---

Q. Would cause death or could?

A. Would cause death by either injury to the lungs, I mean sometimes the fractured ribs can penetrate the lungs---

Q. No, No, in this instance.

A. In this instance---

Choor Singh, J.: Q. In this instance alone, we are concerned only with this instance alone.

A. My Lord, Yes, Good! As I say, this fracture of nine ribs simultaneously would cause pain and shock to the victim which would lead to sudden cardiac arrest and it is this stoppage of the heart that caused death.

Winslow, J.: You stopped halfway when you were asked the question, "These injuries, this fracture of the nine ribs, would cause death by either injury to the lungs---"; then you were asked, "These injuries, the nine fractures to the ribs would cause pain and shock which would lead to sudden cardiac arrest, the stopping of the heart"?

A. I was directed to refer only to this case.

Q. So the early part is general?

A. Yes, Yes, general.

Q. These injuries would cause pain and shock and would lead to death?

Choor Singh, J.: I mean fracture of the rib can pierce the lungs or heart or something, we are not interested in all that.

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We want to know how this woman died.

A.The fracture will stand as causing pain and cardiac arrest.

Winslow,J.: These fractures cause pain and shock which would lead to sudden cardiac arrest stopping the heart, that's all?

A.That's all, Yes.

Q. In other words, Doctor, these fractures on the ribs would cause immediate death?

A. Yes.

10

Choor Sing,J.: Within one or two minutes?

A. Yes, up to two minutes.

Winslow,J.: And this would be independently of the other injuries?

A.Yes, my Lord. In fact I would say that the other injuries externally were very extensive but they did not cause any fractures either of the skull or other parts and did not cause haemorrhage or injury to the internal organs.

20

Choor Sing,J.: Would you agree if the other injuries were caused earlier than the fracture of the nine ribs, the cumulative-- they would accelerate death, the other injuries would accelerate death? This woman had all those injuries on the head and neck and all that, and then somebody did this on the chest, then she would die because she has got pain and shock from the other earlier injuries?

30

A.Yes. Now the point I want to make, my Lord, is, the other injuries may not cause death - besides the fractured ribs - the other injuries by themselves.

Winslow,J: The other external injuries, apart from 14 and 15, they were caused before death?

A.Before death, Yes.

Q. And therefore the one we are concerned, the head and the neck, they were caused before the fracture arose?

A. Yes, sudden---

Q. Therefore, Yes, before anybody sat down on the chest?

A. Yes, the ribs assault was the conclusion, the last, towards the end of the episode.

10 Winslow, J.: Your cause of death, "multiple injuries", that would include everything of course, internal---

A. Yes, internal and extraneous.

Q. The cumulative effect of the external and internal---

D.P.P.: The totality of the injuries.

Winslow, J.: Not external alone.

Q. Now just this question on ribs, one last question on ribs or fracture of ribs; could these ribs have been fractured simultaneously?

20 A. Yes, it would be likely to be fractured at the same time, because, as I say, they were all in the same line, the compression force is one and the same time, and as I pointed out earlier on there were no external injuries. In other words, these fractured ribs could not be caused by blunt instrument hitting on the chest.

Winslow, J.: Or anybody stamping on her chest with his feet?

D.P.P.: Stepping on the chest.

30 Winslow, J.: Stamping, you know jumping about with his feet?

A. Quite different, my Lords, because the force of sitting down and stepping are quite different.

Winslow, J.: When we are sitting down the area is much bigger. When we are stepping the feet might be in contact with a smaller area; there would be fractures but there would be uneven fractures.

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Q. And you would expect some visible injuries?

A. Yes, stamping with the shoes on you would expect external injuries on the chest.

Q. With the bare feet?

A. With the bare feet, there may not be, there may not be, but as I explained the fracture would not be simultaneous, on a straight line on both sides - it would be slightly irregular.

Q. And this sitting position, Doctor, that I explained earlier, that could have caused this injury on the ribs, must have been done several times? Could it have been done several times? 10

A. It's either once or several times, that is one possibility; either once with force or several times.

Winslow, J.: What are you pointing to your chest, pointing vertically?--- that is the direction of the fracture?

A. Yes, in other words the compression is right from the front, at one sitting. 20

Q. Now the external injuries, the ante-mortem injuries, that were found on the deceased were caused by a blunt object, blunt you say, with considerable force repeatedly?

A. Repeatedly with force, Yes.

Q. Doctor, could a foot-long torchlight containing three cells---

Mr. Raman: I beg your pardon. My Lords, I don't think this question will be fair, there is no evidence so far in Court about a foot-long torchlight, with the greatest respect. 30

Winslow, J.: Don't give the length.

D.P.P.: I beg your pardon. Allright.

Q. Could a torchlight have caused these injuries, Doctor?

Choor Singh, J.: Which injuries?



D.P.P.: The external injuries that were found, the ante-mortem injuries, 1 to 13.

Winslow, J.: The ones he said were caused by a blunt instrument.

Choor Singh, J.: Are you referring to injuries on the face, neck, leg or where?

D.P.P.: From 1 to 13 in the autopsy report.

Choor Singh, J.: Some injuries are fingertip injuries, not torchlight injuries, and some are mouth and hand injuries.

Q. The injury on the forehead for that matter, could that have been caused by a torchlight?

Choor Singh, J.: A torchlight is a blunt instrument, of course it could

D.P.P.: Right, my Lords, I will not pursue this question.

Choor Singh, J.: You see, in the course of his evidence he has referred to each one of these injuries; he has said some of these are consistent with a blunt object and gone on to specify such as a fist, blow to the eye, and so on. I mean, there is not much point about talking about a torchlight. All you need ask him is: is a torchlight a blunt instrument. Then it would cover

Winslow, J.: The evidence is already there.

D.P.P.: Much obliged, my Lords.

Q. Now how many times, Doctor, would you be able to indicate has this person inflicted these blows?

Winslow, J.: One of the most important questions in this case is, if there had been no fracture in the ribs, if there had been no injuries, the ones that caused nine fractures, if somebody had not sat down forcefully or anything, would the other 13 injuries - two of them were after death, it doesn't matter - would the whole lot of them taken together, for example, suffice to cause death?

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Q, --- taking into consideration her age and the shock she might have?

A. Well, it can cause death but it is not likely.

Winslow, J.: Independently of the fractures to the ribs, the remaining injuries were unlikely?

A. ---unlikely. I am not ruling out the possibility, still the person can die, but it is not likely.

Choor Singh, J.: In this case, I am talking? 10

A. Because in this case there were no serious internal injuries caused by these.

Q. Doctor, would you be able to tell us how many times these blows were inflicted on her body, taking into consideration the group of injuries that you have found?

Choor Singh, J.: He was not there watching!

D.P.P.: Taking into consideration the number of injuries, my Lords, the various groups of injuries, from 1 to 13, would the Doctor be able to comment how many times these blows were inflicted with a blunt instrument? 20

Witness: I did say---

Winslow, J.: There is only one laceration somewhere, I suppose that's one; if there were two it would be two?

A. All I can say is, these injuries were inflicted by repeated actions.

Q. By repeated actions?

A. Yes. 30

Choor Singh, J.: You mean the whole of---

A. The whole, the front of the head, the face, the neck and so on and so forth, on the hands, these were made by repeated applications of the blunt object.

Q. Just one last question. When she was semi-conscious, can there be any resistance put up or any sort of voluntary reflex action?

A. Could you please repeat the question?

Q. Doctor, if at all she was semi-conscious, can there be any resistance put up or any sort of voluntary reflexive action?

10 A. Yes, if a person--- the important thing is semi-conscious, in other words you don't lose consciousness totally, there is a basic human instinct to resist injuries to oneself. So I think that in a semi-conscious state there could be attempts at resistance to assaults and injuries to the body, although the attempts may not be ineffective because the person was in a semi-conscious state.

D.P.P.: I have got no further questions, my Lords.

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20 Q. Injury No.3, haemorrhages in both eyes: other than this externally causing haemorrhage, there could also arise, if in the event of a person dying from asphyxia, the haemorrhages could arise from internally, is that correct?

30 A. Yes, those haemorrhages are different, my Lords. I think I have made a distinction so many times. The haemorrhages cause in asphyxial death are petechiae haemorrhages, in other words they are spots. For this, they were haemorrhages, a blue-black eye and a large patch of haemorrhages; this is as a result of a direct assault to the eye and not due to asphyxia, and I have specifically mentioned that there was no evidence of manual strangulation, at the post-mortem.

Winslow, J.: Definitely mentioned that there was no evidence?

40 A. Yes, when I was looking at the neck at that time, Yes. As I say, the distinction is made on the haemorrhages caused by asphyxia and by direct assault. In direct assaults,

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the patches are huge and you have got  
bruises around the eyes, as in this case;  
in asphyxial death they are small,  
pinpoint haemorrhages.

Q. Doctor, looking at photograph 10, the bruise  
on the left eye I would agree with you could be as  
a result of a blow, the bruise on the left eye, her  
left eye.

A. Both of them, more on the right, bruises  
around the right eye, in fact you can see the  
right eye is slightly swollen. 10

Q. Those haemorrhages you are referring to can  
be seen in the photograph?

A. What I mean, the haemorrhages and the bruises  
can be seen around here--- I know what you mean  
when you are pointing out that asphyxial death,  
haemorrhages on the whites of the eyes, and these  
are not shown in this photograph, and these are  
distinct from the haemorrhages and bruises around  
the eyes. 20

Winslow, J.: These are haemorrhages around the  
whites of the eyes, not on the eyelid, so you  
can't see from the photographs?

A. Yes.

Winslow, J.: The eyes are closed and you can't  
see the haemorrhages.

Q. Injury No. 3 swelling on the right side of the  
face: could this also be one of the, indicative  
of asphyxia action, the choking of the mouth and  
swelling? 30

A. No, asphyxia by itself could not cause  
swelling of the face. Swelling of the face is  
caused by assault, blows on the face, then you  
have swollen face, it is on one side not both  
sides. Asphyxia could not cause swelling of the  
face.

Winslow, J.: The doctor has ruled out asphyxia.

Witness: Yes, I have.

Winslow, J.: Completely, You are trying to  
shake him are you? 40

Mr. Isaac: No, I wouldn't try such a thing, but myself and Mr. Raman have consulted other--- with the greatest respect.

Winslow, J.: Put it to him if you like.

Q. I put it to you, Doctor, that this lady suffered a condition, traumatic asphyxia, possibly by somebody sitting on her chest and putting his hand on her mouth with great force.

10 A. Well, if you were informed about death, about traumatic asphyxia, you are misinformed. Now, death due to traumatic asphyxia have definite signs and symptoms that show out after death. This term that has been used by Counsel, traumatic asphyxia, means that the chest have been suddenly compressed, so much so that the person cannot breathe and due to the inability to breathe the person dies from lack of oxygen. This occurs in cave-ins, I mean you know workers working in the trench suddenly cave in and they are caught in the sand or something because of the force on the chest the chest cannot expand; also seen in cases, maybe they are contributory to death, such as in a riot, everybody stamping on the chest cause multiple injuries. Now this is definite: there is inability to breathe, it will cause extreme congestion of the face, because of the compression there would be extreme congestion, there would be evidence of asphyxia, there will be petechiae haemorrhages on the eyes, on the surface of the lungs, which were all absent in this case. I have considered these, because I have been dealing with them because I have seen a lot of traumatic asphyxia in industrial accidents. I have ruled that out in this case.

20

30

Q. Do you agree that injury No. 4 showed very strong pressure in the mouth region?

40 A. Yes, as I have explained, this is consistent with - can be two factors, (1) blow to this to cause the abrasions and (2) the hand applying to the mouth to stifle a cry or a combination of these two factors. The strength of the force is indicated by the laceration in the corner of the mouth, in other words, must be pressed quite hard before you can have this laceration. I agree with you that there was force on the mouth.

Q. For example sitting on the chest and the hand

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would be there at the same time, would death be instantaneous from asphyxia and not from the causes you have mentioned?

A. Independent of the 4th on the mouth, I have already said.

Q. I am asking you, simultaneously if somebody sat on your chest, broke your 9 ribs and at the same time had a hand on your mouth would the cause of death be asphyxia?

A. The cause of death would be cardiac arrest, because asphyxia takes some time to occur because of the obstruction of the airway, so that the person cannot breath and death would occur some time later and not instantaneously. This is an important thing. 10

Q. How long?

A. The brain cannot live without oxygen for more than 3 minutes, or if there is obstruction of the airway it should be 3 minutes when the brain is devoid of oxygen and then a person will die, so as I say this will take some time to develop and not instantaneous death. Now the mere application on the mouth with force might cause instantaneous death because of the fright or shock that occurred. You have got what you call a reflex cardiac arrest - a person may drop dead if you apply the hand on the mouth, but you must distinguish this from asphyxial death. 20

Winslow J.: This causing cardiac arrest? 30

A. Yes.

Q. Caused by the hand on the mouth and sitting on her like that, so you have completely ruled out asphyxia?

A. Yes, I have after careful examination of the body.

Mr. Isaac: No further questions.

Winslow J.: Yes, Mr. Raman.

---

Q. Now I want just to clear up one or two points. Will you please forgive me if I develop the same theme, doctor. Now how would you define asphyxia - what is it caused?

A. Obstruction of the airway and causing lack of oxygen to the body.

Winslow J.: What?

A. Because of obstruction, there is no supply of oxygen to the body.

10 Q. Can you accept this definition I am quoting to you - my Lords, I am quoting from Glaister on Forensic Medicine - "Asphyxia may be defined as primarily a state, or series of states, induced by an oxygen supply short of tissue needs." - would that be correct?

A. Yes, this is essentially the same definition that I gave - lack of oxygen.

20 Q. Now would impediment in the respiratory function result in death - resulting from asphyxia?

Q. Yes, that is impediment to the respiratory system would cause asphyxial death. I think this is quite well known.

Q. Now would the combine action of a force caused by a person sitting on somebody's chest accompanied by the closing of the mouth which may sometimes include the nose as well result in the stoppage of the respiratory function?

30 A. Certainly yes, the mere closing of the mouth and the nose is enough, sufficient in itself to stop the air. It is not necessary to have sitting on the chest - the mere closing of the mouth and the nose would be sufficient.

Winslow J.: Including the nose as well?

A. Yes, it must include the nose.

Q. But not the mouth alone?

A. Yes, if you cover the mouth alone, you can breathe with the nose.

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Q. I just want to get it - now would the sitting on the chest and covering of the mouth result in death?

A. No, in what circumstances? Of course, sitting on the chest and causing fracture can cause death and putting your hand on the mouth could result in death. I think this is the point we have made out, I don't think we need labour on this point now. I don't know what the counsel really wants.

10

Winslow J.: You get cardiac arrest?

A. Yes.

Q. Yes, cardiac arrest arising from this fracture of the ribs?

A. Yes.

Q. Now doctor, do you agree that there is some symmetry in the fracture of the ribs - there is a final pattern?

A. Yes.

Q. Would you say there was a certain uniform pressure applied in the region?

20

A. Yes, they were more or less in a straight line and they were more or less symmetrical on both sides.

Q. Now Dr. Chao, you also told us that the pleura was compressed?

A. Compressed, yes.

Q. Now would you agree with me that the pleura has got two parts - the parietal and the viscera - the viscera being the nearer part near the lung?

30

A. Yes.

Q. I will ask you the question, don't volunteer to answer it yet?

A. No, I am explaining to their Lordships, pleura surface is covering inner side of the chest wall and also on the surface of the lung.



This is what I mean by pleura. In this case the bruising of the pleura is on the inner lining over the chest - in other words, these are at the rib region and the fracture caused it to be compressed. I am just clarifying.

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Q. Thank you, doctor, I am much obliged to you. In other words this was compressing of the viscera?

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A. Visceral.

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10 Q. Forgive me for the mispronunciation - viscera?

A. Not viscera actually, it is the lining on the chest wall. Viscera is covering the organs, the lungs - viscera, it means internal organs

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Choor Singh J.: The opposite, the other way round - opposite to what you are saying.

Mr. Raman: I will get the term right.

Winslow J.: The wall nearest the rib?

A. In this case I mean the pleura beneath the rib.

20 Choor Singh J.: Yes, the portion in contact with the rib?

A. Yes, this is parietal pleura. Visceral pleura is covering the lungs which is the other way.

Mr. Raman: I want to establish that the bruise was only viscera one.

A. Not visceral - I have mentioned again and again that it is parietal periphery.

Winslow J.: What is the other word?

30 A. Not visceral, that is covering the lung itself. Viscera is the general term for all the internal organs - intestines, liver or heart or lungs. Visceral is the one covering the lung surface and parietal is the one lining the chest wall.

Choor Singh J.: The simple way of understanding this is that there are two coverings, inner covering and outer covering. In this case it is inner covering is that right, Dr. Chao?

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A. Yes.

Winslow J.: It is between the lining surface of  
the lung?

A. It is just at the lining there.

Q. Now you have told us extensive bruises from  
1 to 13 - these are not bruises, my Lords?

A. 1 to 13 are different groups of injuries which  
I have already elucidated one by one. We cannot  
lump them together and call them bruises.

Q. All right, for the purpose of my question I  
would like to lump all 13 groups of injuries  
together - they consist of bruises, lacerations  
and abrasions, is that right? Now if a person  
has been inflicted these injuries ---

10

Winslow J.: Two of them are defensive?

A. Yes, two of them - Nos. 9 and 10 actually.

Q. Never mind they are defensive injuries, my  
Lord, now would you be able to say any blood  
flowing from those injuries?

A. There was a little blood in the lacerations,  
but there was no substantial blood from those  
wounds. Actually they are mostly bruises and  
abrasions and bruises and abrasions do not cause  
much bleeding.

20

Q. Flow of blood?

A. Yes, in laceration where you have a tissue,  
there is some bleeding there but is not sub-  
stantial.

Q. Now doctor, could an injury which is  
caused soon after cessation of life take on the  
form of an ante-mortem injury, is it possible?

30

A. Possible, yes - in other words I must explain,  
my Lords - an injury caused immediately after  
death can simulate an ante-mortem injury because  
we don't all die at once. We know that a  
person dies at once, but different organs and  
tissues in the body die at different lengths, so  
the thing is if you have a cessation of life,  
the organs might go on for a period of time,  
say, half an hour.

40

Q. Yes, I like to ask you, doctor ---

A. In other words, I know your question - injuries may immediately after death within half an hour or so simulate ante-mortem injuries.

Q. I am grateful for that, doctor.

10 A. Yes, but beyond that there is no more - because injuries that might during life or soon after death, that is what we call vital reaction, in other words, the body reacts against it and that is why I distinguish 14 and 15 from the rest, because they are injuries made long after. 14 and 15, my Lords, are abrasions on the skin.

Q. Now what is the period of time for those injuries post-mortem which may resemble ante-mortem injuries - you say half an hour just now - could it be more than that?

A. Not likely - an isolated report says it may be over one hour. These are isolated cases, but we must talk generally - during half an hour.

20 Q. And whether they are injuries post-mortem or ante-mortem you could carry out a histological test or examination - examination of the tissues, I do not know what you call it?

30 A. Yes, you have brought out a point yourself. If the injury is similar to an ante-mortem injury, by whatever exercise you see they would be similar under the microscope, but I have done examinations and this is why I am certain that 14 and 15 are different. They are definitely made after death - the other ones are quite different. I have made distinction between the two groups already.

Q. Now can I refer you to injury No. 12 which you referred to as three rounded bruises which are consistent with finger tip marks?

A. Yes, that is right.

Q. Now can you just elaborate on that please - when you say finger tip marks, what exactly do you mean?

40 A. My Lords, if you were to examine our finger tips you will see when they are applied with force

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to a certain part of the body because of the gripping action, it will cause bruises and these bruises would form to part of the finger that is in contact with the skin and these are either round or if a little bit more is applied oval in shape and these are made in about 1 cm. in diameter. The finger tips are these - injuries 12 and 13 were almost in similar position on both sides as if both knees were gripped by the hand.

10

Q. I see.

A. And with force.

Q. Thank you, doctor, and my next question is this - you have told their Lordships earlier in Court that the body of the deceased was that of a well nourished female Chinese?

A. Yes.

Q. Was she heavy in build?

A. She was 56.3 kilo in weight.

Q. I must apologise - can you give an idea in pound?

20

A. I think we are turning metric, I wonder why counsel is insisting, my Lords.

Choor Singh J.: About 112 pounds or a little bit more?

A. 2.2 pounds to per kilo - sorry, so this is multiplied by 2.2, but we must conform with Government policy to go metric.

Q. Never mind - if a person were to grip the knees and carried her, would such gripping of the knees leave finger print marks?

30

A. It would leave finger print marks no doubt, but you will notice that counsel was using the thing in a different way to the bruises that were shown in the photographs. May I refer you again to photographs No. 14 and No. 15? My Lords, you will see that the finger print marks are on the front of the knees. Now if you are dragging somebody, you won't be pinching the front of the knees and drag. It is just impossible to do so.

40

Q. I am not saying drag.

A. Yes, you cannot just pinch the knees and carry on.; It is impossible. If you are doing it, you will be doing this as demonstrated by counsel and the finger tip mark would be on the back rather than in front of the knee.

Q. Again it depends on which side of the body, where he was standing, whether he was standing between the legs or by the side?

10 A. Yes, I must refer you to this case and I must refer you to the photographs again. If you were to look at them very carefully, you will see that these marks were all there and this is not the position - gripping of the knee.

Q. You can have the situation where the body was facing backwards and you are carrying the body with somebody carrying upright the torso. Could that situation also leave such marks - I have not been putting various positions to you yet - what about the other way round?

20

A. But the point is the lining of the marks will be different, because if you are holding somebody you would expect this more or less in line, whereas here they are in groups and groups like those, the positions of the marking are different, my Lords. I agree with you that if you hold a person face downwards in this way, you would cause finger tip marks on the knees but it would cause a different pattern of finger tip marks because it would be in this way, in a line, and not isolated in group of 3 and group of 4 - that is a different thing.

30

Choor Singh J.: Of course, Mr. Raman, you are suggesting that this was while she was still alive, is it?

Mr. Raman: It is just possible.

Choor Singh J.: Otherwise it gives me an impression that you are suggesting that the woman was alive and she was lying face down and she was carried alive in that position.

40

Q. Now what I am trying to suggest to you, doctor, is that these marks could have been there when the deceased had been carried immediately after death by her knees, is it possible?

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A. I think there are two parts to this question. First of all, the marks can be left within half an hour after death. The second part of the question is no, these are not consistent with the knees being carried. There are two parts to the question, the first part is yes, certainly bruises can be made, as I have explained earlier, within half an hour after death, that would be similar to ante-mortem injuries in all respects; the second part is, these are not the pattern of the mark made by carrying the body.

10

Winslow J.: A different pattern?

A. Yes.

Q. Now injuries Nos. 1 and 2 as well as 4 and 5 - doctor, could these have been caused by the deceased struggling on the floor with another person?

Winslow J.: 4 and 5?

Mr. Raman: 1, 2 and 4 and 5, my Lord, could these have been caused by the deceased struggling with someone while lying on a hard floor - whether in the course of a struggle?

20

A. Yes, in what position?

Q. She might have been lying on the back or in the course of her struggle, she would have to turn her face downwards on the floor, you know, you will get your nose rubbed as it were in the course of a struggle, is that possible?

A. No, not in this case. My Lords, I will explain why, because it is very important that I wanted the counsel to tell me the position because you will notice, my Lords, these injuries are all on the front of the face. Now if the person is struggling with the face upwards, the person would not sustain such injuries in the struggle unless she had been hit by a blunt object. Secondly, if she was face downwards and struggling on the floor, she could not have caused all these injuries at the same time and in the struggling on the floor she is more likely to have abrasions rather than bruises. In other words, because of the rubbing against the rough surface of the floor, the skin will be scraped off rather than bruises, so the answer to your question is no.

30

40

Q. Could a person who is trying to silence the deceased by applying his hand on her mouth and also at the same time if he missed the mouth, placed the hand incidentally on the eyes let us say with force, could such a situation give rise to these injuries on the eyes, the lips and the nose? You have got the picture of what I am trying to say?

10 A. My Lords, this is a very compound question - counsel is bringing in the eyes, nose and lips together.

Winslow J.: There are two hands, one over the mouth and the other over the eyes applied with force?

Mr. Raman: No, I am not putting that situation. I am just using one hand.

Winslow J.: One hand only.

20 Q. It is a dark room, the person who is putting his hand on the deceased may not quite know where the organs on the face are - now he is groping for the mouth and in the frenzy of groping for the mouth he puts his hand on the face, in the confusion that hand might have hit the eyes or it might have hit the nose, in that sort of struggle, in that sort of situation where there is a groping for the mouth and the hand accidentally touches the eyes or the nose and as a result of some force being exerted, could that cause the injuries which you have itemised? I will give you the items - No. 1, No. 2, No. 3 and  
30 No. 4.

Winslow J.: It is a very long question, but I cannot quite get it. Somebody groping in the dark - he doesn't know whether he has got the nose or the mouth?

Mr. Raman: Yes, my Lord.

Winslow J.: With force, all at one go?

Mr. Raman: All at one go, it has very short intervals.

40 Winslow J.: Give us a demonstration of what you are trying to say?

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Q. Yes, look, my learned friend is lying on the floor, perhaps he is shouting and I am trying to silence him, I don't know where my finger goes, the first placing of the hand may not go right to his mouth, I am just groping and I am getting the sound from him and I go for the mouth but before that my hand goes over the eyes - could that cause these injuries?

Choor Singh J.: Could these injuries be caused in that manner? Does it matter whether it was caused by groping or a blow? What difference does it make if the injuries were caused by groping? You see, the way you put the question - your client will own up that he caused the injuries.

10

Mr. Raman: We may ask this because a blunt instrument was brought up by the prosecution.

Winslow J.: What is that?

20

Mr. Raman: The question of the blunt instrument.

Choor Singh J.: A blunt instrument would include the fist or a torchlight.

Mr. Raman: I wish to clarify the manner in which you have demonstrated may cause these injuries. Your Lordships will bear with me - I have to ask this question on instructions.

Winslow J.: What are these instructions? I don't like--- you are practically telling us to accept something that we all know, something incriminating.

30

Mr. Raman: No, No. There were no instruments used, my Lord, and there was no fisting - I am trying to avoid these two---

Choor Singh, J.: What will it lead to? Does it make your case any lighter because they were caused in this manner, and not caused in that manner?

40

Mr. Raman: To a certain degree, my Lord, it would, it would show the intention of the person who did that act. That is what I am trying to aim at.



Winslow, J.: The important thing is, who sat down forcefully on this woman's chest? The doctor hasn't said very much about the other external injuries.

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Mr. Raman: In that case I will not labour this point.

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10

Winslow, J.: Asphyxia, strangulation, you can go on with him on asphyxia or manual strangulation, but you are going back to these minor injuries which did not cause death.

Evidence for the Prosecution

Mr. Raman: Alright, I will not labour this point.

Cross-Examination of Chao Tzee Cheng by Mr. G. Raman (continued)

Winslow, J.: As long as there was cardiac arrest due to shock. Why waste time?

Mr. Raman: Alright.

Winslow, J.: Or is your defence, accident?---I don't know.

Mr. Raman: That is one of the defences. I am--- Never mind I won't touch on that my Lord.

20

Winslow, J.: I mean, so far the whole line of cross-examination of all the Prosecution witnesses from the very first, there has been no indication of the defence.

Choor Singh, J.: It's coming now.

Winslow, J.: For the first time, since the last witness. So far we have had no indication.

Mr. Raman: It could not be put to any of the Prosecution witnesses.

Winslow, J.: So now it is entirely up to you.

30

Choor Singh, J.: You see, Mr. Raman, the danger is this, by putting this question you are connecting No. 2 with those injuries. You see, the danger? It gives me the impression, speaking for myself, those injuries were caused by your man, irrespective of how they were caused. You should put your version: we may reject your version and we may come to the conclusion they were caused by a blow - but it connects your man with those injuries, if you put that question in that manner. Do you realise that?

40

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Winslow, J.: That is why I am trying to stop you, because you said you were acting on instructions. I thought you were pleading an alibi?

Mr. Raman: We are not pleading an alibi.

Choor Singh, J.: The danger is--- If your instructions are they were caused by your man, go ahead, we are not going to stop you, because the other man will come and say: "I did not cause these injuries." 10

Mr. Raman: I was careful to put it in a hypothetical form, and then your Lordships wanted to be a little more precise.

Choor Singh, J.: I don't see how it will help your man by saying that, "In the dark I groped and I caused those injuries accidentally," if you are owning those injuries were caused by him?

Mr. Raman: We are not owning that up.

Choor Singh, J.: Whether they were caused as a deliberate act or caused accidentally by gripping, does that make any difference? The law is still there: you caused those injuries. 20

Mr. Raman: There is a distinction, if your Lordship will agree with me: as to the motive or intention of the person.

Choor Singh, J.: Where is the accident when your intention is to shut the mouth of the person? 30

Mr. Raman: Exactly, that is the intention.

Choor Singh, J.: So it is not an accident? It is a deliberate act to stifle the person?

Mr. Raman: Quite so, the intention is to quiet her.

Choor Singh, J.: And resulting in death?

Mr. Raman: The resultant death has been explained by the learned pathologist, that is cardiac arrest resulting from 40

the fracture of ribs. I won't labour this point any more.

Choor Singh, J.: If you want to persist please carry on, we are not stopping you.

Mr. Raman: No, No, I won't.

Choor Singh, J.: If you don't make your case worse still, carry on.

Mr. Raman: I seek your Lordship's indulgence, I don't intend to put---

10 Choor Singh, J.: Don't forget, we are sitting also as a jury you know, don't forget that.

Mr. Raman: Alright, my Lord, could I move on to the next point?

Q. Now, Doctor, I just want to clarify one of the points which ought to have been clarified by the Prosecution. The last heading, genito-urinary system: you mentioned something about some whitish discharge present. Now can you tell their Lordships what this whitish discharge is?

20 A. This is normal fluid of the normal female; they secrete some fluid to lubricate the passage. These are the normal---

Q. You mean it is found in women?

A. Yes, Yes.

Q. It is something called leucorrhoea?

30 A. No, leucorrhoea is when you have excessive whitish discharge and that is a disease. In a normal person you have a small amount of whitish fluid that is protective to the lining of the walls. In leucorrhoea, there is a diseased condition and that will cause excessive discharge, which is not so in this case. Leucorrhoea is spelt LEUCORRHEA.

Q. One last question. Is it possible that her death may have been caused by shock as a whole?

Winslow, J.: By---?

Mr. Raman: By shock.

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Choor Singh, J.: In what sense are you using  
the word 'shock', in the medical sense or  
the ordinary, common sense?

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Mr. Raman: In the medical sense.

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A. I have already tendered repeatedly in my  
evidence, both in cross-examination and in  
examination-in-chief, that this is due to pain  
and shock causing cardiac arrest, and I thought  
that is clear enough in my evidence.

Q. I mean I am just asking you, is it possible? 10

A. It is not only possible - it is a cause.

Choor Singh, J.: Yes, one of the causes.

Winslow, J. He has said this is one of the  
causes.

Mr. Raman: That's all, my Lord, I have no  
further questions.

D.P.P.: No re-examination, my Lords.

Winslow, J.: Thank you, Doctor, you can be  
released. Any objections?

Mr. Isaac: No, No. 20

(Witness stands down and is released)

Case for the  
Defence

Submission by Mr. Gopalan Raman on "No Case":

Submission by  
Mr. G. Raman  
for the  
Appellant

May it please you, my Lords, may I at the  
outset associate myself with what my learned  
friend has addressed your Lordships both on the  
facts and on the law---

Choor Singh, J.: Facts?--- Are you adopting his  
argument that they are not connected with  
this Pulau Ubin killing? So all along, for  
two weeks, we have been hearing something  
about some other case, and when they went  
before the magistrate they were talking about  
some other case? 30

Mr. Raman: By facts, what I meant was they had gone there with a different purpose in mind, and it was purely to commit housebreaking nothing more than that.

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Choor Singh, J.: You are not adopting this argument, his first submission, that they did not go there, they were not involved in this particular case?

Transcript of Evidence before the Honourable Mr. Justice A. V. Winslow and The Honourable Mr. Justice Choor Singh

Mr. Raman: Strictly, my Lord---

10 Choor Singh, J.: What they told the magistrate is in connection with some other case, not this Pulau Ubin case?

Case for the Defence

Mr. Raman: That is somewhat technical. Of course, my learned friend is entitled to make his own observations on this.

Submission by Mr. G. Raman for the Appellant (continued)

Winslow, J.: Are you adopting his first submission or not?

Mr. Raman: I have not given it much thought, so I cannot, I would not be in a position---

20 Choor Singh, J.: Maybe you were taken by surprise?

Winslow, J.: You are not submitting it to us?--- Allright, go on with your submission.

30 My submission basically is that the case before your Lordships does not come within the four limbs as defined in Section 300 of the Penal Code. My Lords, murder is an offence which requires strict proof of the criminal intention of the accused persons. The intention must be either to cause death or to cause such bodily injury which is likely to cause death. In this particular case, my Lords---

Choor Singh, J.: No, not 'likely' - sufficient in the ordinary course of nature to cause death.

Winslow, J.: 'Likely' would be culpable homicide not amounting to murder.

Mr. Raman: Sufficient in the ordinary course of nature to cause death---

Choor Singh, J.: You are referring to the four limbs?

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Defence

Submission by  
Mr. G. Raman  
for the  
Appellant  
(continued)

Mr. Raman: Yes, we---

Winslow.J.: Intention to kill; intention to  
cause such bodily injury as the offender  
knows to be likely to cause the death of  
the victim, and so on?

Mr. Raman: Yes.

I would submit that this case does not fall  
within any of these limbs. The 2nd Accused did  
not have any intention to either cause death or  
cause any injury which in the ordinary course of  
nature would have resulted in death. 10

The confessions, my Lords, will have to be  
very carefully read, both the confessions by the  
accused persons, and they will have to be compared,  
my Lords, with each other. My Lords, at the  
outset itself, in the case of the confession - I  
think from henceforth we can refer to these  
documents as confessions, my Lords - your  
Lordships will see:-

"I am making a statement---"

This is Hurun's statement, Exhibit P.34:- 20

"I am making a statement about a murder.  
Two weeks before I committed the offence,  
at about 8.00 p.m. I was standing at the  
Changi jetty, two persons by the name of  
Rosli and Maruf approached me. The person  
referred to as Rosli is only a nickname.  
Rosli and Maruf asked me to go to Pulau  
Ubin. The intention for asking me to go  
there was to steal."

Now he says in quite clear terms why there was  
this discussion to go to Pulau Ubin. Now this  
evidence is also repeated in the statement, in  
the confession of 2nd Accused. 30

Mr. Raman: Now this intention is also  
repeated in the confession by the second  
accused.

Winslow J.: Carry on, Mr. Raman.

Mr. Raman: My Lords, even in this confession  
made by the second accused his intention  
comes out very clearly in the opening  
paragraph. 40

Winslow J.: The second one?

Mr. Raman: Yes, the second one - I have to establish the intention of both the accused, my Lord, first.

Winslow J.: What is the intention?

10 Mr. Raman: "I came here to admit that I was wrong. I had a meeting with two other friends, Hurun and Maarof. The discussion centred around going to a female Chinese house. It was Hurun who asked Maarof whether he wanted to go. Maarof did not want to. When he asked me I told him I wanted to. I went to fetch a sampan at about 7.30 p.m. Hurun and I then went to the house of the female Chinese. The female Chinese was about to sleep when we arrived. Hurun and I circled the house." Here, the circling of the house was to find a point of entry, my Lords - the second accused  
20 wanted to have in order to gain access into the house. If murder is the intention, one simply marches in after banging open the door and does the act, and in the third paragraph of the same confession - "Immediately when she opened the door, Hurun jumped at her. The female Chinese at this stage shouted but her voice was faint. Hurun grabbed the female Chinese after which he asked me to grab hold of this woman. When I took over and grabbed this woman, Hurun entered the room. When I grabbed the woman she put up a fight. I had no intention of killing her. I just hit her. Whilst I was warding off her attacks, her trousers accidentally slipped off." - and it goes on. Here it shows very clearly that he does not commit murder and this is a statement by the second accused  
30 that he went there to steal.

40 My Lords, my respectful submission is that these are the only two documents on which the prosecution rely and both accused persons have said in these confessions that death took place during the sex play. Now could that act itself come within any of those four limbs of section 300? It is my respectful submission that it cannot. If the prosecution wants to place reliance on the confessions, then the act

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which caused the death would have been this sexual  
act committed by the second accused. There is no  
evidence elsewhere.

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Choor Singh J.: Dr. Chao?

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Mr. Raman: Dr. Chao said this is from cardiac  
arrest - cardiac failure which was caused  
by the breakage of the ribs.

Choor Singh J.: Yes, fractures.

Mr. Raman: That is so. Now how did that  
fracture take place? That has not been  
established, my Lord, and there is nothing in  
the confession to explain these fractures.  
There was this hitting by the torchlight on the  
various parts of the deceased's body, namely, on  
the forehead, on the neck, on the nose and so  
forth, but there is nothing else. Could death  
have been caused during the struggle or could  
death have been caused by some form of pressure  
exerted on the chest accidentally in the course  
of a struggle? Now these are the gnawing doubts  
that your Lordships will have to consider and  
overcome.

10

20

Now there is no clear proof, my Lords, that  
there was any act committed by the second  
accused which had resulted in the death of the  
deceased. There is no proof whatsoever. We  
are ask to summarise by the prosecution as to how  
possible this woman could have met her death.  
Two persons went there to house break and to  
steal and in the course of which the woman who  
put up a struggle, she was found to be dead.  
Now we cannot fill in the gaps for the  
prosecution case. With the greatest respect  
to the prosecution, they have to establish their  
case themselves and beyond a reasonable doubt too,  
and the contradictions between the two statements,  
my Lords, are also of great relevance to the  
case of the prosecution. The statement by the  
first accused mentioned Maarof and how Maarof  
actively took part in this whole matter. The  
confession of the second accused does not refer  
to Maarof at all, but the prosecution still place  
their case on the three persons participating in  
the crime, but Maarof is not before your  
Lordships as an accused.

30

40



Choor Singh J.: Why did you say that? They have not mentioned Maarof in the charge. They did not say that you went there with the other two.

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Mr. Raman: But, my Lord, in the opening address they said there were three persons.

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Choor Singh J.: Not in the charge?

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10

Mr. Raman: Not in the charge, yes, but the case is - since the learned D.P.P. opened the case, three persons of which two of them were the accused and then they have said three persons were involved, whereas in the confessions which they themselves have produced that third person's name had been connected together.

Case for the Defence

Choor Singh J.: We have to go by the charge. The charge is against your man, that is, accused No. 2 and accused No. 1 who did all this. They did not mention Maarof.

Submission by Mr. G. Raman for the Appellant (continued)

20

Mr. Raman: Yes, to prove their charge they saw it fit to put in the confessions.

Winslow J.: The opening address is not in evidence. The charge is against the two accused and no more. It does not say Maarof.

Mr. Raman: It does not say Maarof, it is true.

Winslow J.: That is it - one says Maarof the third man went there and the other man said he did not.

30

Mr. Raman.: No, what I am trying to point out is that that would be a material contradiction between the two confessions and there are other contradictions also in the confession by Hurun, the first accused. There is no mention anywhere about what was done to the body of the deceased. It just stopped short of saying that it was taken to the beach. In the case of the second accused we get a different version altogether.

40

Winslow J.: That talk about throwing the woman into the sea?

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Mr. G. Raman  
for the  
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(continued)

Mr. Raman: Yes, throwing the woman into the sea.

Winslow J.: What about the first one?

Mr. Isaac: The first one - "placed her on the beach", page 4.

Mr. Raman: "We then placed her on the beach where the water was nearby the sampan." - about 10 to 12 lines from the bottom. My Lords, if they had gone there to commit this particular act, this murder, this offence, then the situation would have been entirely different. They would have gone there armed. 10

Choor Singh J.: But it is not their case that they went there to murder here? You don't understand - you have wasted hours on section 34.

Mr. Raman: I am sorry - Mimi Wong's case is that this element is important.

Winslow J.: Which element? 20

Mr. Raman: What the second accused did would have caused death or caused bodily injury in the ordinary course of events would have resulted in her death - that in itself is missing with the greatest respect.

Choor Singh J.: You are not following Dr. Chao's evidence. According to him, death was caused by multiple injuries, the fatal injuries are the fatal injuries of the ribs that caused death within one or two minutes. He said there was this compression. Somebody did that - that injury is sufficient in the ordinary course of nature to cause death. Therefore whoever did that of course committed murder. 30

Mr. Raman: Yes, but what was the intention? Whatever he did he should have this particular idea in mind - what I do would in the ordinary course of nature cause death. 40

Choor Singh J.: No, that is English law. If that injury was not caused negligently or accidentally, if it was caused deliberately

then it is murder whether he did not intend the person should die. Again you don't understand - it is sufficient in the ordinary course of nature to cause death - therefore you should read Mimi Wong's case and the Supreme Court of India decision on Virsa Singh.

10 Mr. Raman: Yes, I shall read that at the ad-  
hournment, but as the facts now stand before your  
Lordships, there wasn't any act committed by the  
second accused which would have resulted in death  
or which he would have known would cause an  
injury which would lead to death. That isn't  
there - at the most it would be recklessness due  
to his negligence or it might have been an  
accidental act which resulted in the fracture of  
the ribs. At the worst, my Lords, he should be  
charged for culpable homicide not amounting to  
murder under section 304, not under 302, because  
20 the requirement under section 302 has been very  
clearly emphasised so many times before your  
Lordships - on many occasions, the intention to  
commit an act which would have the intention to  
cause death or any injury which in the ordinary  
course of nature would result in death.

Winslow J.: When the woman put up a fight, I  
hit her. I had no intention to kill  
her - that may be so, but what did he do?

30 Mr. Raman: Yes, from the confession it would  
appear from the sexual act this took place.

Winslow J.: Having regard to the medical  
evidence?

Mr. Raman: No, we have to place some weight  
on this confession, my Lord.

Winslow J.: Would you say this was caused  
negligently or accidentally? Does it  
sound like it from those words you read from  
those confessions?

40 Mr. Raman: Yes, my Lord, I would respectfully  
refer to Dr. Chao's evidence where he said the  
other injuries items 1 to 13 could not likely to  
have caused death. What caused the death was  
cardiac arrest arising from the fracture of the  
ribs. Now how does the fracture of the ribs arise?  
That is not shown in either of the confessions, so

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the Court will have to surmise. Was it in the course of the struggle or was it a deliberate act by him? He is not required to explain something which is not shown in the prosecution case. He does not have to show - yes, this is how death occurred. They have to prove it.

Choor Singh J.: So your submission is that he has no case to answer, is that right?

Mr. Raman: That is putting the case at its highest. 10

Choor Singh J.: In other words the prosecution has not made out a case of murder against accused No. 2?

Mr. Raman: That is my respectful submission, What I would say, I would go beyond that and say if there was a struggle and there had been negligence in the way he acted, then he is liable to culpable homicide under section 304 and not more. My Lords, I have got one case on death which took place in the course of sexual act which is --- 20

Choor Singh J.: But this sexual act is not the cause of death in this case? The medical evidence is there - sex has nothing to do with her death. Sex or no sex, the woman would have died in any case.

Mr. Raman: Well we are still doubtful as to ---

Choor Singh J.: No, the evidence of Dr. Chao has this fixed. You are in the dark - death was caused by fracture and so on - of 9 ribs, there is no doubt about that. 30

Mr. Raman: We will accept that.

Choor Singh J.: Your submission should be - my man did not cause that, therefore we are not liable for murder?

Mr. Raman: Yes, I should say so.

Choor Singh J.: Instead of going in the roundabout way.

Mr. Raman: And I submit that the defence should not be called upon to answer this charge under 40

section 302, if at all only a charge under section 304 would at this stage be sustained, my Lords.

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Case for the Defence

Submission by Mr. G. Raman for the Appellant (continued)

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Submission by D.P.P. on 'No Case'

Submission by D.P.P.

10 D.P.P.: May it please you, first of all may I just dismiss my learned friend Mr. Isaac's argument on the need to connect it - the deceased with the present case before your Lordships, and I would say the argument put out by my learned friend is hilarious and which is equally ridiculous - the suggestion that this is a different case, these two accused who are different ---

Winslow J. : A different deceased.

D.P.P.: In terms of the charge. Now without much ado ---

20 Choor Singh J.: Their submission is that - at least No.1, what he told the magistrate was not about this woman in the charge. He was talking about some other matter, some other incident.

D.P.P.: That is why I say it is hilarious and ridiculous to base his argument on that. I

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(continued)

should go on to section 302, as to whether the prosecution has made out a prima facie case and your Lordships are familiar with Virsa Singh's case where the third limb of section 300 has been put forward by the Supreme Court. I shall now go into the actual facts of the case.

Winslow J.: I don't know about it - where is it reported?

D.P.P.: Virsa Singh - A.I.R. 1958 Supreme Court at page 468.

10

Winslow J.: It is referred to in the judgment of the Chief Justice?

D.P.P.: It is mentioned on page 78 in paragraph 'F' on the left side.

Winslow J.: It is about the third limb

D.P.P.: That is right, the third limb of section 300 - sufficient in the ordinary course of nature to cause death. I don't think your Lordships want me to go into it. I have Virsa Singh with me.

20'

Choor Singh J.: Would you go on the exposition of the third limb for their benefit?

D.P.P.: May I read from page 466, Paragraph 9 - I don't know whether the book is before your Lordships? In any case - "If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly" (third limb) would be unnecessary because the act would fall under the first part of the section, namely - "If the act by which the death is caused is done with the intention of causing death." In our opinion, the two clauses are disjunctive and separate." - I beg your pardon, I have got the wrong section.

30

Winslow J.: What page is it?

D.P.P.: At 465, my Lord.

Winslow J.: Where are you reading from?

D.P.P.: 467, I believe right at the top of 467 - "and the bodily injury intended to be

40

inflicted is sufficient in the ordinary course of nature to cause death." The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it that is to say if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining - "and the bodily injury intended to be inflicted" - is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

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To put it shortly, the prosecution must prove the following facts before it can bring a case under section 300 "thirdly";

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

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

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

10

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of

30

40



nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

10 My Lords, this is the test that has been set out in Virsa Singh's case and it has been subsequently followed in other decisions of the Indian courts more than the Supreme Court level and the lower court. It is the prosecution submission, with respects to my Lords, that there is an offence under section 302 made out. The question of tying up the accused with the death of the deceased is quite clear from the confessions, my Lords - that death was caused and this was caused as a result of the actions of both the accused.

20 On the question of common intention, I don't want to disturb what has already been set out. Your Lordships have rightly observed in Mimi Wong's latest decision and the various Indian court decisions of Barendra Kumar Ghosh and Mahboob Shah have to some extent modified this. Your Lordships will take the cue from Mimi Wong. The common intention on the part of the first accused has been quite clear from the fact that he was present, though there was the original intention to rob, though he was  
30 married with the robbery and here this question of hurt is material because it was clearly established in the confessions by both accused the fact that the first accused was present and he was involved in the act of stifling, if that is what in actual fact happened - stifling the deceased's mouth and pushing her down and with the second accused coming in to rain the blows. The numerous blows that were inflicted on her and from what we can see, they were injuries which you  
40 can say that there was an intention to cause this bodily injury sufficient in the ordinary course of nature to cause death and it is the prosecution submission that a prima facie case has been made out and if un rebutted would warrant a conviction under section 302.

I shall not go into the authority on common intention, but Mimi Wong's case has settled the law on that and as to the question of the confessions, I think these confessions themselves

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Submission by D.P.P.  
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(continued)

have lent weight to the autopsy report that has been put forward by the pathologist and together they have given us an irresistible inference that both these accused went there to cause what has been set out in this charge.

Choor Singh J.: For the information of counsel for the defence and the prosecution, Mimi Wong case also went to the Privy Council and the appeal was dismissed and the point of section 34 was taken before the Privy Council.

10

Mr. Raman: Yes.

D.P.P.: I am obliged, my Lord.

Choor Singh J.: And she had been hanged already.

Winslow J.: We have decided that the defence should be called on the charges framed. In order to give you an opportunity to prepare your defence, we will adjourn at this stage and I will formally call upon the defence tomorrow at 10.30 a.m.

20

Mr. Raman: As your Lodship pleases.

(Court adjourns at 4.00 p.m., 14.3.74 to  
10.30 a.m., 15.3.74).

Defence of  
the First  
Accused  
  
Warning to  
the accused,  
Hurun bin  
Ripin

Winslow, J.: Ask the 1st Accused to stand up. Tell him there are three courses open to him in his defence: he can either go into the witness-box, like any other witness, in which case he is liable to be cross-examined by the Deputy Public Prosecutor, or he can make an unsworn statement from where he is, or he can remain silent.

30

What course does he propose to follow?  
He can consult his Counsel.

Interpreter: 1st Accused elects to give an unsworn statement from the dock.

Winslow, J.: Very well, what does he wish to say? First of all, his name.

STATEMENT BY HURUN BIN RIPIN (1st Accused) FROM THE DOCK:

My name is Hurun bin Ripin. About two weeks before the incident at Pulau Ubin, Maruf and Rosli came and saw me. At that time I was at Changi jetty at about 8.00 p.m. One of them asked me what was I doing then; I told them that I was working as a porter there and I was earning a salary which was sufficient to support my family.

Winslow, J.: What were the last few words, "sufficient to support---"?

10 Interpreter: "---my family."

One of them told me that there was an old lady in Pulau Ubin who had a lot of money and one of them suggested that I join them to steal her money. I asked them how they knew about that. They replied that they lived in Pulau Ubin. They also said that the old woman had a shop in Pulau Ubin where many come to buy things from her.

20 I did not say anything to them and I left the place. Then one of them asked me again whether I wanted to join them, but I told them that I would think it over.

30 Two weeks later I was at Changi jetty. Rosli came to me and asked me whether I had made up my mind to join him in stealing the money. I said to him, "How are we going there?" He replied that he would get a sampan. Then I told him that I would wait for him at the jetty while he went to fetch the sampan. While I was waiting for Rosli Maruf arrived. He told me that he had just returned from a cinema show. I asked him whether he had decided to join us. He replied that he did not want to join us. Then he walked away.

Rosli arrived with a sampan and I boarded the sampan. Rosli then rowed the sampan to Pulau Ubin. When we arrived at Pulau Ubin Rosli showed me the house that we intended to commit theft.

40 Having got down from the sampan, we pulled the sampan to the shore. Rosli walked ahead of me, I followed him, and we circled the house two or three times. We were looking for an entry into the house, but we could not find one. I then walked to the kitchen door of the house, Rosli walked away

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Defence of the First Accused

Statement from the Dock of the First Accused

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from me, and then I heard the fowls making a lot of noise. Then I heard the voice of a Chinese woman who was speaking in Chinese inside the house. Then the door was opened, a Chinese woman with a torchlight emerged from the door and she shouted something in Chinese.

I was shocked by the shout. I grabbed her from behind and I placed my hand on her mouth to stifle her cry. She stepped back and she fell down. At that time, Rosli came and he tried to shut her mouth with his hand. Then I went into the house. 10

I went into a room and it was very dark, I could not see anything. I then went out of the house and I saw Rosli holding the torchlight.

Vhoor Sing, J.: "I then went out of the house."?

---out of the house, and I saw Rosli pointing the torchlight. So I took the torchlight from him. I went back into the room and I took \$40, a ring and 10 packets of cigarettes. 20

Then I went out of the house and I saw this woman lying with her face downwards. I saw Rosli standing near the kitchen door. I asked Rosli what happened to the woman. Rosli replied that he had placed his hand on this woman's mouth and then she died.

When I noticed this I was very worried and in a confused state of mind I scolded Rosli and I was about to hit him. Then I said to him what are we going to do now? Then Rosli said that he thought the woman was only unconscious. He suggested that we carry her to the beach and place some water on her face. 30

We placed her on the beach. Rosli went into the water to scoop some water. Suddenly I heard the sound of a motor cycle and saw some lights approaching. I then ran and boarded the sampan. Rosli also boarded the sampan and he rowed back the sampan to Changi jetty. I went up Changi jetty and Rosli rowed away the sampan to return it back. 40

After a while Rosli came and both of us boarded a taxi and went to Bedok. We took some food at a stall there. After that both

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Statement from  
the Dock of the  
First Accused  
(continued)

of us went to Jalan Besar and then we returned back to Changi.

I have no intention to kill this woman. I went there to steal. That is all, my Lords.

Mr. Isaac: My lords, I am not calling any other witnesses

Winslow J.: All right, let him sit down.

Mr. Isaac: Do I submit at this stage?

Winslow J.: Is that your case?

10 Mr. Isaac: That is my case, my Lords. Would your Lordship allow me to submit after Mr. Raman so that I can have the benefit of it?

Winslow J.: Yes.

(CASE FOR THE FIRST ACCUSED).

20 Winslow J.: Tell the second accused to stand up and explain to him the three courses open to him as I have told the first accused. He can give evidence in the witness-box in which case he will be cross-examined by the learned Deputy or he can make an unsworn statement from the dock or he can remain silent. He can take one of these courses and he can consult his counsel if he wishes to do so.

Interpreter: Second accused elects to give an unsworn statement from the dock.

30 STATEMENT OF MOHD. YASIN BIN HUSSIN @ ROSLI  
(Second Accused) FROM THE DOCK

My name is Mohd. Yasin bin Hussin @ Rosli. About two weeks before the incident, Maarof came and met me. Maarof said that there was something that could be done at Pulau Ubin and then we went to see Hurun. When I saw Hurun I

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Defence of the First Accused

Statement from the Dock of the First Accused (continued)

Defence of the Appellant

Warning to the accused

Statement from the Dock of the Appellant

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asked him what he was doing then. He said that he was working as a porter and it was sufficient for him to support his family.

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Maarof told Hurun that in Pulau Ubin there was a lady who had a lot of money. Hurun asked him how he knew about that. Maarof replied that he knew about that because he lived at Pulau Ubin and he saw many people buying things in this woman's shop. Hurun did not reply. When Hurun was walking away, I asked him whether he would join us. He did not reply anything. Then Maarof and I left the place. 10

Defence of  
the Appellant  
Statement from  
the Dock of the  
Appellant  
(continued)

At the time of the incident I saw Hurun at the jetty. I asked him whether he would like to join us to go and steal. Hurun asked how we were going there.

Choor Singh J.: Hurun ---

Second Accused: Asked how we were going there. I replied that I would look for a sampan. I then fetched the sampan and rowed up to the jetty. At the jetty I saw Maarof there. 20

Winslow J.: At the jetty I saw Maarof ----

Second Accused: I saw Maarof there. I asked him whether he wanted to go. He said no. Hurun then came into the sampan and I rowed it to Pulau Ubin.

When we were about to reach Pulau Ubin, I pointed the house where we wanted to steal to Hurun. We landed on the beach and pulled the sampan ashore. I walked ahead of Hurun and he followed me. We circled the house two or three times. Then I went to disturb the fowls. The fowls made a lot of noise. 30

I heard the voice of a Chinese woman inside the house. I and Hurun were standing by the side of the door. When the door was opened, I went straight into the house. I saw the woman lying on the ground.

Winslow J.: Tell me what is the last bit - you went into the house and --- 40

Second Accused: And I saw the woman lying on

the ground. I placed my hand on this woman's mouth and Hurun went into the house. The woman was struggling. I tried to grab the torchlight which she was holding. She hit my hand with her hand. I shut her mouth with my hand. Again I tried to grab the torchlight. She pushed my hand away and then she shouted.

Winslow J.: What was the last bit once again, Mr. Interpreter? She pushed my hand and

10

Interpreter: And she shouted.

Second Accused: I shut her mouth with my hand again and then I managed to grab the torchlight from her. She was struggling, so I hit her head with the torchlight.

Choor Singh J.: So I hit ---

Second Accused: I hit her head with the torchlight. With her hand she hit me on my face, so I pressed my hand on her mouth again. Hurun then came out and took the torchlight away from my hand. Hurun went back into the house. I shut this woman's mouth with my hand. She again struggled, she pushed my hand away, but I managed to shut her mouth with my hand. Then suddenly she was motionless. I lifted the hand and she did not make any movement. I shook her. Then I saw that she was dead. I became worried. I then stood near the kitchen door.

20

Hurun came out and shone the torchlight at this woman. Hurun asked me what had happened to this woman. I told him that I had shut the mouth with my hand and she died. Then Hurun wanted to hit me. I told Hurun that I had no intention to kill this woman. I was only preventing her from shouting.

30

Hurun then said - what we were to do then? I then suggested that we carried her to the beach, placed some water on her face and tried to revive her. We carried the woman and placed her on the beach. When I was about to fetch some water, I heard the sound of a motor cycle and saw the light approaching. I became frightened. I called out to Hurun to board the sampan and then I rowed back the sampan to Changi jetty.

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Defence of the Appellant

Statement from the Dock of the Appellant  
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Choor Singh

Defence of  
the Appellant

Statement from  
the Dock of the  
Appellant  
(continued)

Hurun got up at Changi jetty. I rowed the sampan away to return it. After that I met Hurun again. We then boarded a taxi and went to Bedok where we had some food. I asked Hurun to follow me to Jalan Besar and later we went back to Changi.

I went to Pulau Ubin to steal and I had no intention to kill any one. That is all, my Lords.

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Winslow J.: Have you got any witnesses?

10

Mr. Raman: That is my case, my Lord, I have no witnesses.

Winslow J.: That is your case.

(CASE FOR THE SECOND ACCUSED).

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Closing Addresses - 15.3.1974:

Mr. Nathan Isaac - 11.45 a.m. to 12.34 p.m.

Mr. Gopalan Raman - (12.35 p.m. to 1.00 p.m. and  
2.15 p.m. to 2.45 p.m.)

D.P.P. - 2.46 p.m. to 3.04 p.m.

—  
(Court adjourns at 3.05 p.m. for  
brief recess.)

20



Winslow, J.:

After careful consideration of all the evidence in the case, we are satisfied beyond a reasonable doubt that the injury which caused the death of the deceased was inflicted by the 2nd Accused.

10 According to Dr. Chao, whose evidence we accept, this injury comprised fractures of 9 ribs in the front of the chest, caused by compression of the chest with some force. The sudden pain and shock suffered by the deceased as a result of these fractures brought about cardiac arrest, causing her death within one or two minutes. According to Dr. Chao, the fractures of the 9 ribs was sufficient to cause death in the ordinary course of nature, independently of other injuries found on the deceased.

20 On the evidence before us, we have no doubt at all that the aforesaid fatal injury was intentionally caused by the 2nd Accused and that it was not caused accidentally or otherwise unintentionally. Consequently, the act of the 2nd Accused in causing the fatal injury was an act which clearly falls within the third limb of the definition of murder, because he intended to inflict that injury within the meaning of the said third limb, and we accordingly find him guilty of murder as defined in the Penal Code.

30 On the evidence before us, we find that the common intention of the two Accused was to rob the deceased when she opened the door of her kitchen and came out. We also find that in the course of the robbery, whilst the 1st Accused was in her bedroom searching for valuables, the 2nd Accused had sexual intercourse with her after considerable resistance on her part. Therefore, the possibility of the 2nd Accused's having caused the fatal injury in furtherance of his desire to have sexual intercourse with her cannot be ruled out. If so, the fatal injury would appear to have been inflicted not in furtherance of the common intention to commit robbery but in furtherance of the 2nd Accused's own intention to rape the deceased.

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In the circumstances, we are not satisfied

In the Supreme Court in Singapore

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No. 2

Transcript of Proceedings before the Honourable Mr. Justice A.V. Winslow and the Honourable Mr. Justice Choor Singh  
Finding of the Court  
15th March 1974

Conviction and sentence of Hurun Bin Ripin (First Accused)  
15th March 1974

In the Supreme  
Court in  
Singapore

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No. 2

Transcript of  
Proceedings  
before the  
Honourable Mr.  
Justice A.V.  
Winslow and  
the Honourable  
Mr. Justice  
Choor Singh  
Conviction and  
sentence of  
Hurun Bin Ripin  
(First Accused)  
15th March 1974  
(continued)

beyond a reasonable doubt that the 1st Accused is guilty of murder by the application of the doctrine of common intention as defined in section 34 of the Penal Code. We find him, however, guilty of robbery by night, under section 392 of the Penal Code.

The 1st Accused is accordingly convicted of robbery by night under section 392 of the Penal Code.

Winslow, J.: Anything known? 10

D.P.P.: Yes, my Lords, He has had three previous convictions. 7th November, 1959, Report No. G.24232, offence under section 380, Penal Code, date of sentence 13.6.1960 - sentenced to one year's probation, with effect from that date. Court Case No. Juvenile Court 284/59.

The second conviction, my Lords, the 25th of October, 1963, Report No.M3209/71, offence under section 379 of the Penal Code, date of sentence 2nd of November, 1963 - sentenced to 6 months' imprisonment. 9th Magistrate's Court, my Lords, Case No.6948/63. 20

Third conviction, my Lords, 28th of December, 1965, Report No. G.17693, offence under section 454 of the Penal Code, date of sentence 1st of March, 1966 - sentence to 18 months' imprisonment. Court case number, 2nd District Court No. 56. 30

That is all, my Lords, of the 1st Accused.

Winslow, J.: You wish to say anything in mitigation, Mr. Isaac?

Mr. Isaac: Yes, my Lords, much obliged, my Lords. The 1st Accused was born in 1946 he is at present 28 years of age. He was born in the State of Johore. When he was 14 years old he came to Singapore and lived in Changi, my Lords. His father is about 60 years, mother about 50, my Lords. There are seven members in the family, my Lords. He has had some Malay education in Tanjong Surat School, Johore; he studied only up to the 5th standard. Since then he has been 40

working as an odd-job labourer and porter, my Lords. He is married, wife works as a factory girl in 'Fairchild'.

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Your Lordships, I ask you to take into consideration the fact that the last previous conviction was in 1965.

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D.P.P.: That is so, my Lords, 1965, 28th December; he was sentenced on the 1st of March, 1966.

Transcript of Proceedings before the Honourable Mr. Justice A.V. Winslow and the Honourable Mr. Justice Choor Singh

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Mr. Isaac: My Lords, all the previous offences indicate no violence being used, my Lords. All were offences of non-violence.

Conviction and sentence of Hurun Bin Ripin (First Accused)

I also ask your Lordships, whatever sentence you may impose, in view of his family, to run from the date of his arrest.

15th March 1974  
(continued)

Winslow, J.: 10th of February?

Mr. Isaac: ---1972.

Winslow, J.: Last year?

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Mr. Isaac: That's right. Nothing further to add, my Lords.

Winslow J.: We have taken into account what has been said on your behalf. We take a serious view of the robbery by night at the time and date in question on the facts relating to this charge.

30

Winslow, J.: You will go to prison for 12 years with effect from the date of your arrest, that is the 10th of February, 1973, and in addition you will undergo 12 strokes with the cane.

Tell the 2nd Accused that we convict him of murder as charged.

Conviction and sentence of the Appellant

(SILENCE IS CALLED)

15th March 1974

(SENTENCE OF DEATH IS PASSED)

Winslow, J.: Exhibits to Police.

(Court adjourns at 4.20 p.m. on 15.3.1974)

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In the Supreme  
Court in  
Singapore

No. 3

FOUNDATIONS OF DECISION OF THE HONOURABLE MR.  
JUSTICE WINSLOW AND THE HONOURABLE MR.  
JUSTICE CHOOR SINGH - 25th JULY 1974

No. 3

Foundations of  
decision of  
the Honourable  
Mr. Justice  
Winslow and  
the Honourable  
Mr. Justice  
Choor Singh

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE  
Criminal Case No. 18 of 1973

PUBLIC PROSECUTOR

v.

25th July  
1974

1. HURUN BIN RIPIN
2. MOHD. YASIN BIN HUSSIN @ ROSLI

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Coram: Winslow J.  
Choor Singh J.

FOUNDATIONS OF DECISION

The above named accused persons were charged  
before us as follows :-

"That you, 1. Hurun bin Ripin  
2. Mohd. Yasin bin Hussin alias  
Rosli

between 10.00 p.m. on the 22nd day of April  
1972 and 9.30 a.m. on the 23rd day of April,  
1972 at No.836-X Pulau Ubin, Singapore, in  
furtherance of the common intention of both  
of you, committed murder by causing the  
death of one Poon Sai Im, and thereby  
committed an offence punishable under  
section 302 read with section 34 of the  
Penal Code (Cap.103)"

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At the conclusion of their trial, the first  
accused was convicted of robbery by night under  
section 392 of the Penal Code and sentenced to  
12 years imprisonment together with 12 strokes of  
the cane. The second accused was convicted of  
murder and sentence of death was passed on him.  
The second accused now appeals against his con-  
viction and sentence. There is no appeal by the  
first accused.

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Poon Sai Im, the deceased person mentioned  
in the charge, was a widow, aged 58, who lived  
alone in a hut situated by the sea on Pulau Ubin.  
She also ran a small provision shop there in

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her hut and a short distance away was a small hut in which she housed some chickens.

10 On the 23rd April 1972 at about 10 a.m. Lim Ah Moi, the youngest of the four married daughters of the deceased, paid her a visit. Lim Ah Moi found her mother's house in disorder and her mother missing. The bedroom and kitchen appeared to have been ransacked. The kitchen door was open and the kitchen cabinet was tilted to one side in a slanting position. She went off to report the matter to her eldest sister and her husband Ng Tan Tee who lived on the mainland at Lorong Bekukong. Ng Tan Tee immediately set off for Pulau Ubin and went to his mother-in-law's house. He found the house in disorder as already described and his mother-in-law was missing. He went to the Changi Police Station where he reported the matter.

20 On the same day i.e. the 23rd April, 1972 at about 9.30 a.m. the dead body of a female Chinese was found floating in the sea at a distance of 200 yards from Pulau Ubin. There was a string around her waist and she was naked below the waist. This discovery was made by the taikong of a fishing boat who immediately reported the matter to the Marine Police. The body of the female Chinese was recovered from the sea by the police and taken to General Hospital mortuary.

30 When Ng Tan Tee reported that his mother-in-law was missing from her house at Pulau Ubin, Inspector Syed Kadir Alsree proceeded to Pulau Ubin and met Ng Tan Tee at the Pulau Ubin Police Station. Ng Tan Tee took the Inspector to his mother-in-law's house. Inspector Kadir examined the premises. He found the bedroom in disorder as shown in photographs P3, P4 and P5. He also saw that two drawers were lying on the floor, one on top of the other. He concluded that the drawers had been forced open since there were marks on the cabinet at the site where the drawers had been before. He also found the identity card of the deceased. In the kitchen he found a gold coloured ear-ring and a digging pin for digging ears near the ear-rings. He also found three white buttons and two black hair clips on the floor near the ear-ring but he found no blood stains whatever anywhere in the hut. On the same day at 40 about 6 p.m. he took Ng Tan Tee to the General Hospital mortuary and there Ng Tan Tee

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(continued)

identified the body of the female Chinese which had been recovered from the sea earlier that day as that of his mother-in-law, Poon Sai Im. The next day Ng Tan Tee identified the same dead body to Dr. Chao Tzee Cheng, Consultant Pathologist, who carried out an autopsy on the body.

Dr. Chao gave evidence for the prosecution. He stated that the cause of death was "multiple injuries". He estimated that death had occurred about 36 hours before the autopsy and fixed it at around midnight of the 22nd April 1972. In his report he listed 15 external injuries:

1. multiple bruises over the whole forehead with small abrasion on the left side. 10
2. multiple small bruises over the bridge of nose with small abrasions.
3. Haemorrhages in both eyes especially on the right side with bruise around the right eye. 20
4. multiple small bruises and abrasions on the lower lip and chin with laceration on the right corner of lower lip.
5. bruises on left chin.
6. a small irregular laceration 0.5 cm. long on the left side of upper neck. Further down the left side of the lower neck another similar laceration.
7. small bruises on lobe of left ear.
8. right face appears swollen as compared with left face. 30
9. extensive bruising on the radial side of right wrist 7 x 5 cm. and back of right hand at base of index finger.
10. multiple abrasions and bruises along left forearm wrist and back of left hand.
11. bruise and abrasions on left hip with some linear scratches.

12. a group of three rounded bruises about 1 cm. in diameter on the inner side of the right knee consistent with finger tip marks.
13. another group of four similar bruises on the inner side of left knee.
14. right elbow shows abraided skin with no vital reactions indicating injury made after death.
- 10 15. left elbow shows similar abraided skin without vital reactions.

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Dr. Chao also found fractures of the left 2nd to 5th ribs and right 2nd to 6th ribs at mid-clavicular line anteriorly on both sides with bleeding of pleura beneath but he found no free blood in the chest cavity. Dr. Chao took us through a list of external injuries some of which were, according to him, injuries caused by a blunt object, or a blunt instrument. He was able to relate some of them to blows with a blunt object such as a fist, particularly in the case of the blows to the eye and to the mouth and chin. According to him, the injuries to the mouth and chin were consistent with the application of a hand with force over the mouth as in an attempt to stifle a cry or a combination of a blow to the mouth with a blunt object and the application of a hand to the mouth.

Dr. Chao stated that some of the injuries were defensive injuries and there were some which occurred through contact with a rough surface like the ground. Two particular injuries, numbers 12 and 13, revealed finger tip marks indicating force with finger tips on the knees of the deceased to keep her knees down or to force them apart. Injuries 14 and 15, he said, were received after death in the sense that the body whilst floating in the sea could have knocked into stones or rocks therein.

Dr. Chao said that the first eight injuries were in the head and neck region but injuries 9 and 10 were defensive injuries and that 11 was an injury to the hip and 12 and 13 to the knees as aforesaid. He was positive that the deceased did not die of drowning and that there was no evidence of manual strangulation.

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Dr. Chao was of the opinion that the most serious injury and which caused death consisted of fractures of the second to the fifth ribs on the left and the second to the sixth ribs on her right in the front portion of her chest. He was of the opinion that these injuries to the ribs suggested compression of the front chest although there were no external injuries over the chest. He said that the pleura was bruised and that this was consistent with someone sitting on her chest with force. He said that her lungs were congested although her heart was normal. Her stomach was empty but other organs were congested. He found two smaller abrasions on the right side of her vaginal wall near the entrance. He was quite positive that death had occurred before she was thrown into the sea.

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Dr. Chao was of the opinion that pressure points on her chest were consistent with someone sitting with force on her chest as she was lying on the floor on her back and that this was most probably what occurred. He said that the fracture of the nine ribs aforesaid would, in the ordinary course of nature, cause her death quite independently of the other injuries. He said that the pain and shock of sudden fracture would cause a person to die instantaneously or within a short period of one to two minutes. He said that these fractures caused congestion of the lungs by causing sudden cardiac arrest i.e. stoppage of the heart.

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Dr. Chao was of the opinion that the remaining external injuries to which we have referred earlier, although extensive, did not cause any fracture and did not cause haemorrhage or injury to internal organs. He said that these external injuries had occurred before the fractures to her ribs which caused her death. He did not think that the external injuries Nos. 1 to 13 were likely to cause death independently of the fractured ribs. With regard to the injuries to the knees, the finger tip marks, he said that these indicated that both knees were gripped with force by hand and he referred to photographs at P14 and P15 showing finger marks on the front of the knees. He said that there would be a different pattern of finger tip marks if a person were holding another by the knee whilst that person was being carried upside down.

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The first accused was arrested on the 9th February 1973 and two days later, on the 11th of



February he gave a statement to a Magistrate which is to the following effect:-

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"I am making a statement about a murder. Two weeks before I committed the offence at about 8 p.m. I was standing at the Changi jetty. Two persons by the name of Rosli and Maarof approached me. The person referred to as Rosli is only a nickname. Rosli and Maarof asked me to go to Pulau Ubin. The intention for asking me to go there was to steal. During the discussion I told them that I would think things first. I then went home.

Two weeks after the discussion I was at the Changi jetty at about 8 p.m. Rosli came and approached me. He asked me what my answer was. I then asked him how we were to go there. He informed me that he would obtain a sampan for us. It was whilst I was waiting at the jetty that Maarof came. He had just seen a film show. Rosli then came with a sampan towards the jetty and Maarof and I boarded the said sampan. Rosli rowed the sampan to Pulau Ubin.

We arrived at Pulau Ubin at about 10 p.m. When we reached the beach Rosli showed us the house where we were going to enter and steal. When we arrived I asked Rosli and Maarof to go on shore first. They refused. So Rosli and I went on shore whilst Maarof waited at the sampan. On reaching the shop it was locked. Rosli then went into the chicken coop and disturbed the chicken there. The chicken made a lot of noise. I then heard a female voice talking in Chinese. I then saw an old female Chinese carrying a torchlight opening the door of the kitchen. At that time I was outside the kitchen door. When the female Chinese opened the door I quickly placed my hands on her mouth. She then shouted and fell. Rosli then came inside and snatched the torchlight from the old woman's hand. He then hit the old woman with the torchlight on the head, then on the neck, then on both hands and also on both the legs. Whilst Rosli was doing that I could not see clearly as it was quite dark. Only the flash of the torchlight was there. Rosli whilst hitting the woman sat on the woman's body and had one of his hands on the woman's mouth. I then went into the room. I did not see

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what Rosli did afterwards. When I entered the room I found it was dark. There was no light. I then left the room and snatched the torchlight from Rosli's hands. After that I went into the room again. Whilst flashing the torchlight in the room I found cash totalling \$40.00, one gold ring and 10 packets of '555' cigarettes. When I found there was nothing more I left the room. Whilst leaving the room I saw Rosli in the act of fixing the buttons on his trousers. I then shone the torch downwards. I saw that the woman was lying face downwards on the floor. Her trousers were slit until the knee. I then flashed the torchlight over the woman's private parts and I observe sperm was flowing there. I then asked Rosli what he had done to the woman. He then told me that whilst he was having sexual intercourse with the woman, the woman suddenly died. I asked Rosli what had to be done to the woman. He told me to carry the woman and throw into the sea. We then carried the woman together. I held the body whilst Rosli carried both her legs. We then placed her on the beach where the water was nearby the sampan. I then had a quarrel with Rosli and Maarof. I told them I had regretted what had happened. Rosli and I then boarded the sampan and rowed home whilst Maarof went back to his house at Pulau Ubin. Rosli then sent me to the Changi jetty where I alighted. He then returned the sampan to the place where had had lent it. I waited at the jetty until he arrived. When he arrived we took a taxi to Bedok where there were eating stalls. There I scolded Rosli for having sexual intercourse with the old woman. I told him there were many places where he could have sexual intercourse. He then asked me to show him where Jalan Besar was.

At Jalan Besar after we had alighted from the taxi I handed Rosli \$10/- so that he could find a girl there for him to have sexual intercourse. Before we entered he asked me whether I would like to join him. I told him I had a wife and there was no need for me. He then went in with the girl. I waited outside.

Afterwards both of us boarded a taxi to

Changi. There I left him and went home. I do not know where Rosli went. That is all.

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Q. Is that all you wish to say?

A. Yes

Q. Do you wish to make any alterations?

A. Yes. During this discussion with Rosli and Maarof I did ask them how they know there was a lot of money at the place where we were going to steal. They then told me they knew about that as they were staying at Pulau Ubin. The trousers the woman was wearing was black in colour. Rosli arrived at the jetty at 1.00 a.m. That is all."

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The second accused was arrested on the 10th February 1973 and on the next day he made a statement before a Magistrate to the following effect:-

"I came here to admit that I was wrong. I had a meeting with two other friends Harun and Maarof. The discussion centred around going to a female Chinese's house. It was Harun who asked Maarof whether he wanted to go. Maarof did not want to. When he asked me I told him I wanted to. I went to fetch a sampan at about 7.30 p.m. Harun and I then went to the house of the female Chinese. The female Chinese was about to sleep when we arrived. Harun and I circled the house. The female Chinese was silent and the lights were being dimmed.

Harun and I then looked for a spot from where we could climb into the house. There was no entrance where I could enter. So I went to disturb the chickens at the chicken coop. The chickens made a lot of noise which woke up the female Chinese who came out with a small light.

Immediately when she opened the door, Harun jumped at her. The female Chinese at this stage shouted but her voice was faint. Harun grabbed the female Chinese after which he asked me to grab hold of this woman. When I took over and grabbed this woman, Harun entered the room. When I grabbed the woman she put a fight. I had no intention of killing her. I just hit her. Whilst I was warding off her attacks, her trousers

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accidentally slipped off. When I saw this my desire was aroused. I then wanted to have sexual intercourse with her. Before I could start to play her she gave a blow at me. I warded it off. When my penis penetrated into her vagina she suddenly fell silent.

After I had played her I pulled out my penis. The female Chinese was still quiet. Whilst I was doing all these Harun was ransacking the room. When Harun came out of the room he found nothing inside it. He then asked me to carry the woman into the sampan. After putting the body into the sampan. We left the shore. I was rowing the sampan. Half way across Harun suggested that we throw the woman into the sea. After doing so i.e. throwing the woman into the sea, I went back to the jetty. 10

From the jetty Harun and I went to Bedok for some food. After having some food Harun asked me to follow him to Desker Road. He wanted to give me a treat. There I played another woman i.e. had sexual intercourse. From Desker Road Harun asked me to go back to Changi. Then I went back to the motor boat where I slept. That is all. 20

Q. Is that all you wish to say?

A. Yes.

Q. Do you understand the statement just interpreted and explained to you?

A. Yes. I do. 30

Q. Do you wish to make any alterations, corrections, additions or amendments?

A. No."

Counsel for both accused objected to the admission in evidence of the statements made by the two accused to the Magistrate. A trial within-a-trial was held to decide the question of admissibility. The first accused gave evidence on oath and made allegations of assault, inducement and threat, on the lines of the suggestions made earlier in cross-examination of the police witnesses. He further alleged that what he told the magistrate was what he had been 40

coached to say by Inspector Michael Won; that there had been a rehearsal in the course of which photographs and the pathologist's report had been shown to him by Inspector Michael Won and that he had been drilled into making a statement such as the one he in fact made. He stated that the Inspector took him through the story from the beginning to the end three or four times. He admitted that he went there to steal. He claimed that he had been promised that he would be charged only with robbery if he made a confession and that this was in his mind when he went to the magistrate to make the statement. All these allegations were denied on oath by Inspector Michael Won.

The second accused in his evidence made similar denials of the voluntary nature of his statement to the magistrate. He stated that he had been threatened and assaulted as well as given promises and inducements before he went to the magistrate. He maintained that he had been assured that the magistrate would help him and that he would only be charged with rape and not with murder. He alleged that Inspector Michael Won had forced him to see the magistrate and that the Inspector had taught him what to say in his statement to the magistrate. He claimed that half of the statement he made to the magistrate was his own and that the other half was that of Inspector Won's. He stated that he was obliged to tell untruths to the magistrate because he was afraid he would be beaten up. He also claimed that he was assaulted in the police lock-up on the night of the 14th or 15th February 1973. All these allegations were denied on oath by Inspector Michael Won.

We accepted Inspector Won's evidence. In particular we accepted the fact that on being asked by both the accused as to what would happen to them after they had made cautioned statements to him on 10th February 1973 he took great care to assure them that they were entirely at liberty to make a statement to a Magistrate if they so wished and that they were under no compulsion to do so. He told them that they could have time to think it over. Next day, they indicated that they wished to see a Magistrate. He never at any time made any "deal" with them.

We were also impressed by the evidence of Mr. Sundram who was then in charge of the Special

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Investigations Section of the C.I.D. It was his initiative and immediate response to what little information he obtained in the corridor on the ground floor of the C.I.D. on the morning of the 10th of February that caused him, after further questioning the first accused to proceed with him forthwith, to Changi Point where the first accused pointed out the second accused who was then in a boat which was about to leave. He instructed his subordinates to arrest the second accused whilst he himself took the first accused a short distance away and then had him sent to the C.I.D. to be taken back to Inspector Won. The latter was actually in charge of this particular case but Mr. Sundram had instructed him to continue attendance at a conference at the C.I.D. earlier in the morning whilst he, Mr. Sundram, went "after the second chap". 10

We disbelieved the evidence of both accused given in the trial within a trial on the issue of the admissibility of their statements made to the magistrate. In our judgment they were not speaking the truth. We were satisfied that no assault as alleged took place on the part of any police officer nor was there any truth in the other allegations of both accused. 20

Having considered carefully all the evidence on the issue of admissibility we had no doubt at all that the allegations of both accused were groundless. We were satisfied beyond a reasonable doubt that both accused made their statements to the magistrate voluntarily and in circumstances which made them clearly admissible in evidence. We therefore admitted both statements in evidence. 30

We acted only on those parts of each statement which affected the maker thereof and not his confederate. We did not, in the light of the clear authorities on the subject, take into consideration what one co-accused said to implicate the other as to the events which occurred after their arrival at the hut in which their victim resided. 40

After hearing submissions and considering the evidence for the prosecution as a whole, including that of the pathologist, we were able to conclude that a prima facie case had been established that the two accused went to

the hut to commit robbery; that there was a common intention not only to rob but also to meet any resistance with violence and that the criminal act which caused the death of the deceased was committed in furtherance of the said common intention. The circumstances of the doing of that act were consistent with the common intention of both accused to commit robbery with violence and prima facie both participants in the robbery were by virtue of the doctrine of common intention as expounded in Mimi Wong's case (1972) 2 M.L.J. 75 responsible for the death of the deceased.

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We were also satisfied that the death of the deceased was caused in circumstances which constituted murder as defined in the Penal Code.

We were also satisfied that a prima facie case had been made out against each of the accused which if unrebutted would warrant a conviction on the charge on which they were being tried. We accordingly called upon both accused to enter upon their defence.

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After being advised of the three courses open to them, each accused, one after the other, elected to make an unsworn statement from the dock.

The first accused's unsworn statement from the dock was as follows :-

"My name is Harun bin Ripin. About 2 weeks before the incident at Pulau Ubin, Maarof and Rosli came and saw me. At that time I was at Changi jetty at about 8 p.m. One of them asked me what was I doing then. I told him that I was working as a porter then and I was earning a salary sufficient to support my family. One of them then told me then that there was an old lady at Pulau Ubin who had a lot of money and one of them suggested that I join them to steal her money. I asked them how they knew about that and they replied that they lived in Pulau Ubin. They also stated that the old woman had a shop in Pulau Ubin where many people went to buy things from her. I did not say anything to them and I left the place. Then one of them asked me again whether I wanted to join them. I told them that I would think it over. Two weeks later I was at Changi jetty. Rosli came to me and asked me whether I had made up

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(continued)

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my mind to join him in stealing the money. I said to him, "How are we going there?". He replied that he could get a sampan. Then I told him that I would wait for him at the jetty while he went to fetch the sampan. While I was waiting for Rosli, Maarof arrived. He told me that he had just returned from a cinema show. I asked him whether he had decided to join us. He replied that he did not want to join us. Then he walked away. Rosli arrived with a sampan and I boarded the sampan. Rosli then rowed the sampan to Pulau Ubin. When we arrived at Pulau Ubin, Rosli showed me the house at which we intended to commit theft. Having got down from the sampan, we pulled the sampan on shore. Rosli walked ahead of me. I followed him and we circled the house two or three times. We were looking for an entry into the house but we could not find one. I then walked to the kitchen door of the house. Rosli walked away from me. Then I heard the fowls making a lot of noise. Then I heard the voice of a Chinese woman who was speaking Chinese inside the house. Then her door was opened. A Chinese woman with a torchlight emerged from the door and she shouted something in Chinese. I was shocked by the shout. I grabbed her from behind and I placed my hand on her mouth to stifle her cries. She stepped back and fell down. At that time Rosli came and he tried to shut her mouth with his hand. Then I entered the house. I went to a room. It was very dark I could not see anything. I then went out of the house. I saw Rosli holding the torchlight. So I took the torchlight from him. I went back to the room and I took \$40/—, a ring and ten packets of cigarettes. Then I went out of the house. I saw this woman lying with her face downwards. I saw Rosli standing near the kitchen door, I asked Rosli what happened to the woman. Rosli replied that he had placed his hand on this woman's mouth and then she died. When I heard this I was very worried and in a confused state of mind I scolded Rosli and I was about to hit him. Then I said to him, "What are we going to do now?" Then Rosli stated that he thought the woman was only unconscious. He suggested that we carry her to the beach and place some water on her face. We placed her on the beach. Rosli went to the water and scooped some water. Suddenly I heard the sound of a motor cycle and

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saw some light approaching. I then ran and boarded the sampan. Rosli also boarded the sampan and he rowed the sampan back to Changi jetty. I went up Changi jetty and Rosli rowed away the sampan to return it back. After a while Rosli came and both of us boarded a taxi and went to Bedok. We took some food at a stall there. After that both of us went to Jalan Besar and then we returned back to Changi. I had no intention to kill this woman. I went there to steal. This is all my lords."

The second accused's unsworn statement from the dock was as follows :-

"My name is Mohd. Yasin bin Hussin alias Rosli. About two weeks before the incident Maarof came and met me. Maarof said that there was something which could be done at Pulau Ubin and then we went to see Harun. When I saw Harun I asked him what he was doing then. He said that he was working as a porter and it was sufficient for him to support his family. Maarof told Harun that in Pulau Ubin there was a lady who had a lot of money. Harun asked him how he knew about that Maarof replied that he knew about that because he lived in Pulau Ubin and he saw many people buying things in this woman's shop. Harun did not reply. When Harun was walking away I asked him whether he would join us. He did not reply. Then Maarof and I left the place. At the time of the incident I saw Harun at the jetty. I asked him whether he would like to join us to go to steal. Harun asked how we were going there. I replied that I would look for a sampan. I then fetched a sampan and rowed it to the jetty. On the jetty I saw Maarof there. I asked him whether he wanted to go. He said, "No". Harun then came into the sampan and I rowed it to Pulau Ubin. When we were about to reach Pulau Ubin I pointed the house where we wanted to steal, to Harun. We landed on the beach and pulled the sampan ashore. I walked ahead of Harun and he followed me. We circled the house two or three times. Then I went to disturb the fowls. The fowls made a lot of noise. I heard a voice of a Chinese woman inside the house. Harun was standing by the side of the door. When the door was opened I went straight into the house and I saw a woman lying on the ground. I placed my hand on this woman's mouth and Harun went into the house. The woman was

In the Supreme Court in Singapore

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No. 3

Grounds of decision of the Honourable Mr. Justice Winslow and the Honourable Mr. Justice Choor Singh

25th July 1974  
(continued)

In the Supreme  
Court in  
Singapore

—  
No. 3

Grounds of  
decision of  
the Honourable  
Mr. Justice  
Winslow and  
the Honourable  
Mr. Justice  
Choor Singh  
25th July  
1974  
(continued)

struggling. I tried to grab the torchlight which she was holding. She hit my hand with her hand. I shut her mouth with my hand. Again I tried to grab her torchlight. She pushed my hand away and she shouted. I shut her mouth with my hand again and then I managed to grab the torchlight from her. She was struggling. So I hit her hand with the torchlight. With her hand she hit me on my face. So I pressed my hand on her mouth again. Harun then came out and took the torch light away from my hand. Harun went back into the house. I shut this woman's mouth with my hand. She again struggled and pushed my hand away but I managed to shut her mouth with my hand. Then suddenly she was motionless. I lifted her hand and she did not make any movement. I shook her. Then I saw that she was dead. I became worried. I then stood near the kitchen door. Harun came out and shone the torchlight at this woman. Harun asked me what had happened to this woman. I told him that I shut her mouth with my hand and that she died. Then Harun wanted to hit me. I told Harun that I had no intention to kill this woman. I was only preventing her from shouting. Harun then said what we were to do then. I then suggested that we carry her to the beach, place some water on her face and try to revive her. We carried the woman and placed her on the beach. When I was about to fetch some water I heard sound of motor cycle and saw a light approaching. I became frightened. I called out to Harun to board the sampan and then I rowed back the sampan to Changi jetty. Harun got out at Changi jetty. I rowed the sampan away to return it. After that I met Harun again. We then boarded a taxi and went to Bedok where we had some food. I asked Harun to follow me to Jalan Besar and later we went back to Changi. I went to Pulau Ubin to steal and I had no intention to kill anyone. That is all." 10  
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Both accused did not call any witness in their defence.

After hearing their statements from the dock we were satisfied, on the whole of the case, that there was good reason to distinguish between

the parts respectively played by them in the hut on the night in question. We formed the view on case as a whole that the first accused was more truthful than the second accused and less disposed to violence.

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10 We found that having regard to his own voluntary statement made to the magistrate which he varied later in his statement from the dock, the second accused was an untruthful witness who was concealing the fact that, in furtherance of his sexual urges, he inflicted the fatal injury on the deceased. He took great pains to say from the dock that he only pressed or shut her mouth etc. several times. We were satisfied beyond a reasonable doubt that whilst left alone with the deceased and whilst the first accused was in another part of the hut, engaged in helping himself to loot, the second accused inflicted the greater part of the injuries to the deceased including the fatal one. Although there was no direct evidence 20 of this, the inference was irresistible, in the light of his statement to the Magistrate which we believed to be true, that he alone was responsible for the fatal injury which he inflicted in the furtherance of his abnormal sexual desires.

Grounds of decision of the Honourable Mr. Justice Winslow and the Honourable Mr. Justice Choor Singh

25th July

1974

(continued)

30 Although the first accused is not appealing against his conviction or sentence, we have set out in full our findings in respect of both accused. We have done so in order to give a full picture of the whole trial and the considerations which impelled us to distinguish between the two accused and in particular to emphasise the stands taken by them both at the trial within the trial which followed the objections taken to the admissibility of their statements to the magistrate as well as after their defence was called when both made statements from the dock.

40 We found that the injury which caused the death of the deceased was an injury which the second accused alone intended to inflict and that the said injury was sufficient in the ordinary course of nature to cause death. He was the actual doer of this criminal act as a result of his being overcome by his sexual desires which he intended to fulfil and which he proceeded to fulfil by forcibly separating her knees and/or pressing them down and sitting forcibly on her chest in the course of a violent struggle to reduce her to his will. In this intention on his part to commit rape the first accused did not concur. He was indeed taken by surprise

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Singapore

when he did discover the enormity of what the  
second accused had done.

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No. 3

At the conclusion of the trial, we delivered  
a short oral judgment in the following terms :-

Grounds of  
decision of  
the Honourable  
Mr. Justice  
Winslow and  
the Honourable  
Mr. Justice  
Choor Singh

25th July  
1974  
(continued)

"After careful consideration of all the  
evidence in this case, we are satisfied  
beyond a reasonable doubt that the injury  
which caused the death of the deceased was  
inflicted by the second accused. According  
to Dr. Chao, whose evidence we accept, this  
injury comprised fractures of nine ribs in  
the front of the chest caused by compression  
of the chest with some force. The sudden  
pain and shock suffered by the deceased as a  
result of these fractures brought about  
cardiac arrest causing her death within one  
or two minutes. According to Dr. Chao, the  
fractures of the nine ribs were sufficient  
to cause death in the ordinary course of  
nature independently of other injuries found  
on the deceased.

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On the evidence before us we have no doubt  
at all that the aforesaid fatal injury was  
intentionally caused by the second accused  
and that it was not caused accidentally or  
otherwise unintentionally. Consequently  
the act of the second accused in causing the  
fatal injury was an act which clearly falls  
within the third limb of the definition of  
murder because he intended to inflict that  
injury within the meaning of the said third  
limb and we accordingly find him guilty of  
murder as defined in the Penal Code.

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On the evidence before us we find that  
the common intention of the two accused was  
to rob the deceased when she opened the door  
of her kitchen and came out. We also find  
that in the course of the robbery, whilst  
the first accused was in a bedroom searching  
for valuables, the second accused had sexual  
intercourse with her after considerable  
resistance on her part. Therefore, the  
possibility of the second accused's having  
caused the fatal injury in furtherance of his  
desire to have sexual intercourse with her  
cannot be ruled out. If so, the fatal  
injury would appear to have been inflicted  
not in furtherance of the common intention

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to commit robbery but in furtherance of the second accused's own intention to rape the deceased.

In the circumstances, we are not satisfied beyond a reasonable doubt that the first accused is guilty of murder by the application of the doctrine of common intention as defined in section 34 of the Penal Code.

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We find him, however, guilty of robbery by night under section 392 of the Penal Code.

We find the second accused guilty of murder under section 302 of the Penal Code."

The first accused was convicted under section 392 of the Penal Code and in the light of his previous convictions he was sentenced to 12 years imprisonment and 12 strokes of the cane.

The second accused was convicted under section 302 of the Penal Code and sentence of death was passed on him.

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Sd. A.V. Winslow

JUDGE

Sd. Choor Singh, J.

JUDGE

SINGAPORE, 25th July, 1974.

No. 4

PETITION OF APPEAL - 23rd  
August, 1974

In the Court  
of Criminal  
Appeal  
Singapore

IN THE COURT OF CRIMINAL APPEAL SINGAPORE  
COURT OF CRIMINAL APPEAL NO. 5 OF 1974

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(In the matter of High Court Criminal Case No.18  
of 1973)

Between  
MOHD YASIN BIN HUSSIN @ ROSLI                      Appellant  
And  
THE PUBLIC PROSECUTOR                                      Respondent

No. 4

Petition of  
Appeal  
23rd August  
1974

In the Supreme  
Court in  
Singapore

No. 3

Grounds of  
decision of  
the Honourable  
Mr. Justice  
Winslow and  
the Honourable  
Mr. Justice  
Choor Singh

25th July  
1974  
(continued)

In the Court of  
Criminal Appeal  
Singapore

PETITION OF APPEAL

Filed this 23rd day of August, 1974

No. 4

Petition of  
Appeal

23rd August  
1974

(continued)

To The Honourable the Judges of the Court of  
Criminal Appeal, Republic of Singapore.

The Humble Petition of Mohd Yasin bin Hussin  
@ Rosli, the Appellant herein respectfully  
SHOWETH as follows :-

1. Your Petitioner was charged together with  
Hurun bin Ripin on the 4th day of March, 1974 in  
the High Court at Singapore before the Honourable  
Mr. Justice A.V. Winslow and the Honourable Mr.  
Justice Choor Singh as follows:

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THAT YOU, (1) Hurun bin Ripin and (2) Mohd.  
Yasin bin Hussin @ Rosli, between 10.00 p.m.  
on the 22nd day of April, 1972 and 9.30 a.m.  
on the 23rd day of April, 1972 at No.836-X,  
Pulau Ubin, Singapore, in furtherance of the  
common intention of both you, committed  
murder by causing the death of one Poon Sai  
Im, and thereby committed an offence punishable  
under Section 302 read with section 34 of the  
Penal Code (Chapter 103).

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2. Your Petitioner claimed trial to the said  
charge and the trial was proceeded with.

3. At the conclusion of the said trial the  
learned Judges convicted Your Petitioner on the  
charge and sentenced Your Petitioner to suffer  
death on the said charge.

4. Your Petitioner is dissatisfied with the said  
conviction on the following grounds:-

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(i) The learned trial Judges erred in law and  
in fact in holding that Your Petitioner  
had the requisite criminal intention to  
warrant a conviction under Section 302 of  
the Penal Code, Chapter 103.

(ii) The learned trial Judges erred in law and  
in fact in their finding that the statement  
by Your Petitioner to a learned Magistrate,  
which statement is marked as exhibit P35,  
was voluntary and therefore admissible, and  
have further erred in law and in fact in  
not adequately scrutinising the evidence of

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Your Petitioner and the other witnesses who testified at the trial on the admissibility of the said statement, that the said statement was not voluntary.

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Petition of  
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(continued)

10 (iii) The learned Judges erred in law and in fact in not directing or in not adequately directing their minds on whether the alternative verdict of culpable homicide not amounting to murder under section 304 of the Penal Code Chapter 103 could be substituted for the charge of murder under section 302 of the said Code in view of the following:

- (a) that exception 1 of section 300 of the Code abovementioned should have been invoked in view of all the circumstances of the case.
- 20 (b) that the trial Judges found as a fact that "the fatal injury would appear to have been inflicted ... in furtherance of the second accused's (i.e. Your Petitioner's) own intention to rape the deceased" and further that Your Petitioner "was the actual doer of this criminal act as result of his being overcome by his sexual desires which he intended to fulfil and which he proceeded to fulfil by forcibly separating her knees and/or pressing them down and sitting forcibly on her chest in a violent struggle to reduce her to his will"
- 30

This alleged act of Your Petitioner as underlined by Your Petitioner above, which Your Petitioner will contend is not supported by any evidence, when construed in the light of the evidence adduced at the trial does not amount to the overt act required by section 300 of the Penal Code, Chapter 103.

- 40 (iv) That the learned trial Judges erred in law and in fact in not giving sufficient weight, and consideration to the evidence of Your Petitioner and the other witnesses who testified on behalf of the defence.
- (v) That the learned trial Judges erred in law and in fact in that there were reasonable doubts

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arising from the major contradictions and  
discrepancies in the evidence adduced by the  
prosecution and the benefit of such doubts  
ought to have been accorded to your  
Petitioner.

No. 4

Dated this 23rd day of August, 1974.

Petition of  
Appeal

Solicitors for the abovenamed  
Appellant.

23rd August  
1974  
(continued)

The address for service of the Appellant is care  
of Messrs. Yeow & Raman of No.27-B North Canal  
Road, Singapore.

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No. 5

No. 5

Judgment of  
the Court of  
Criminal Appeal

JUDGMENT OF THE COURT OF CRIMINAL  
APPEAL - 4th November 1974

4th November  
1974

IN THE COURT OF CRIMINAL APPEAL OF THE REPUBLIC  
OF SINGAPORE

Criminal Appeal No. 5 of 1974

Between

Mohd Yasin bin Hussin  
alias Rosli

Appellant

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And

Public Prosecutor

Respondent

Coram: Wee Chong Hin, C.J.  
T. Kulasekaram, J.  
Tan Ah Tah, J.

JUDGMENT

A well nourished Chinese 58 year old widow  
lived alone in a hut situated right by the sea on  
a small island, Pulau Ubin, off Singapore. Her  
nearest neighbour was about 100 yards away. On  
23rd April 1972 at about 9.30 a.m. her dead body  
was found floating in the sea about 200 yards from  
Pulau Ubin. She was found clad in a blue striped

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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. The other button spaces had bare threads showing.

An autopsy was performed and the pathologist's evidence is that death occurred at around midnight of 22nd April 1972. There were fifteen external injuries on the deceased and these were:-

- 10       "(1) Multiple bruises over the whole forehead with small abrasion on the left side.
- (2) Multiple small bruises over the bridge of nose with small abrasions.
- (3) Haemorrhages in both eyes especially on the right side with bruise around the right eye.
- (4) Multiple small bruises and abrasions on the lower lip and chin with laceration on the right corner of lower lip.
- (5) Bruises on left chin.
- 20       (6) A small irregular laceration 0.5 cm long on the left side of upper neck. Further down the left side of the lower neck another similar laceration.
- (7) Small bruises on lobe of left ear.
- (8) Right face appears swollen as compared with left face.
- (9) Extensive bruising on the radial side of right wrist 7 x 5 cms and back of right hand at base of index finger
- 30       (10) Multiple abrasions and bruises along left forearm wrist and back of left hand.
- (11) Bruise and abrasions on left hip with some linear scratches.
- (12) A group of three rounded bruises about 1 cm in diameter on the inner side of right knee consistent with finger tip marks
- (13) Another group of 4 similar bruises on the inner side of left knee.

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1974  
(continued)

(14) Right elbow shows abraided skin with no vital reactions indicating injury made after death.

(15) Left elbow shows similar abraided skin without vital reactions."

His evidence is that some of these external injuries were caused by a blunt object or blunt instrument and that the injuries on the mouth and chin were consistent with the application of a hand with force over the mouth or a combination of a blow to the mouth with a blunt object such as a fist and the application of a hand to the mouth. He said some of the injuries were defensive injuries and some could have occurred through contact with a rough surface like the ground. He said injuries 14 and 15 could have been caused by the dead body knocking onto rocks while floating in the sea.

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He also found fractures of the left 2nd to the 5th rib and of the right 2nd to the 6th rib, at mid-clavicle line anteriorly on both sides. There was also bruising of the pleura but there were no external injuries over the fractured ribs and no free blood flowing in the chest cavity. In his opinion the internal injuries he found were consistent with compression from in front such as someone sitting on the deceased's chest with force and the deceased lying down on the floor. He was of the opinion that independent of the other injuries the injuries on the ribs were sufficient in the ordinary course of nature to cause death and that the deceased died through a sudden cardiac arrest because of the pain and shock caused by the simultaneous fracture of the nine ribs. He was positive that the deceased did not die of drowning and that there was no evidence of manual strangulation.

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A detailed examination of the deceased's hut disclosed that the bedroom was in disorder with two drawers of a cabinet having been forced open and left on the floor. In the kitchen a gold coloured ear-ring, a pin for cleaning ears, three white buttons and two hair clips were found on the floor.

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On 9th February 1973 one Harun bin Ripin was arrested in connection with the deceased's death. On 10th February 1973 the appellant

Mohamed Yasin bin Hussin alias Rosli was also arrested. They were subsequently charged and tried before the High Court consisting of two Judges of having caused the death of the deceased in circumstances amounting to the offence of murder. The charge reads as follows :-

"That you, 1. Harun bin Ripin  
2. Mohd. Yasin bin Hussin alias  
Rosli

10 between 10.00 p.m. on the 22nd day of April 1972 and 9.30 a.m. on the 23rd day of April 1972 at No.836-X Pulau Ubin, Singapore, in furtherance of the common intention of both of you, committed murder by causing the death of one Poon Sai Im, and thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Cap.103)".

20 At the conclusion of the trial, Harun 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 caning. The appellant was convicted of the offence of murder and sentenced to death. He now appeals against his conviction.

30 At the trial, the case for the prosecution against each of the two accused persons depended solely on a statement which each of them had made before a magistrate. The appellant made his statement the day after his arrest. At the trial counsel for each accused objected to its admissibility and in consequence there was a trial within a trial to decide the question of admissibility. After hearing evidence the trial judges admitted in evidence the statements made by both accused. The only relevant statement for the purposes of the present appeal is the statement of the appellant which reads as follows :-

40 " I came here to admit that I was wrong. I had a meeting with two other friends Harun and Maarof. The discussion centred around going to a female Chinese's house. It was Harun who asked Maarof whether he wanted to go. Maarof did not want to. When he asked me I told him I wanted to. I went to fetch a sampan at about 7.30 p.m.

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Harun and I then went to the house of the female Chinese. The female Chinese was about to sleep when we arrived. Harun and I circled the house. The female Chinese was silent and the lights were being dimmed.

Harun and I then looked for a spot from where we could climb into the house, There was no entrance where I could enter. So I went to disturb the chickens at the chicken coop. The chickens made a lot of noise which woke up the female Chinese who came out with a small light. 10

Immediately when she opened the door, Harun jumped at her. The female Chinese at this stage shouted but her voice was faint. Harun grabbed the female Chinese after which he asked me to grab hold of this woman. When I took over and grabbed this woman, Harun entered the room. When I grabbed the woman she put up a fight. I had no intention of killing her. I just hit her. Whilst I was warding off her attacks, her trousers accidentally slipped off. When I saw this my desire was aroused. I then wanted to have sexual intercourse with her. Before I could start to play her she gave a blow at me. I warded it off. When my penis penetrated into her vagina she suddenly fell silent. 20

After I had played her I pulled out my penis. The female Chinese was still quiet, Whilst I was going all these Harun was ransacking the room. When Harun came out of the room he found nothing inside it. He then asked me to carry the woman into the sampan. After putting the body into the sampan we left the shore. I was rowing the sampan. Half way across Harun suggested that we throw the woman into the sea. After doing so i.e. throwing the woman into the sea, I went back to the jetty. 30

From the jetty Harun and I went to Bedok for some food. After having some food Harun asked me to follow him to Desker Road. He wanted to give me a treat. There I played another woman i.e. had sexual intercourse. From Desker Road Harun asked me to go back sic 40

to Changi. Then I went back to the Motor-boat where I slept. That is all".

The appellant, when called to enter upon his defence to the charge of murder, elected to make an unsworn statement from the dock, the material portions of which read as follows :-

"Harun then came into the sampan and I rowed it to Pulau Ubin. When we were about to reach Pulau Ubin I pointed the house where we wanted to steal, to Harun. We landed on the beach and pulled the sampan ashore. I walked ahead of Harun and he followed me. We circled the house two or three times. Then I went to disturb the fowls. The fowls made a lot of noise. I heard a voice of a Chinese woman inside the house. Harun was standing by the side of the door. When the door was opened I went straight into the house and I saw a woman lying on the ground. I placed my hand on this woman's mouth and Harun went into the house. The woman was struggling. I tried to grab the torchlight which she was holding. She hit my hand with her hand. I shut her mouth with my hand. Again I tried to grab her torchlight. She pushed my hand away and she shouted. I shut her mouth with my hand again and then I managed to grab the torchlight from her. She was struggling. So I hit her hand with the torchlight. With her hand she hit me on my face. So I pressed my hand on her mouth again. Harun then came out and took the torchlight away from my hand. Harun went back into the house. I shut this woman's mouth with my hand. She again struggled and pushed my hand away but I managed to shut her mouth with my hand. Then suddenly she was motionless. I lifted her hand and she did not make any movement. I shook her. Then I saw that she was dead. I became worried. I then stood near the kitchen door. Harun came out and shone the torchlight at this woman. Harun asked me what had happened to this woman. I told him that I shut her mouth with my hand and that she died. Then Harun wanted to hit me. I told Harun that I had no intention to kill this woman. I was only preventing her from shouting. Harun then said what we were to do then. I then suggested that we carry her to the beach, place some water on

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her face and try to revive her. We carried  
the woman and placed her on the beach.

....I went to Pulau Ubin to steal and I had  
no intention to kill anyone".

There can be no doubt whatsoever from the  
evidence that the only person that evening who  
laid hands on the deceased before she was "placed  
on the beach" was the appellant. The vital  
questions were whether or not her death was  
caused by an act of the appellant and, if so,  
whether or not he had caused her death in  
circumstances amounting to murder as defined in  
Section 300 of the Penal Code.

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The material provisions of Section 300 read  
as follows :-

"  
"300. Except in the cases hereinafter  
excepted culpable homicide is murder -

(a) ... ..

(b) ... ..

(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;"

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The trial judges held that the appellant  
caused the death of the deceased within the  
above definition and convicted him of the  
offence of murder. Their findings and their  
reasons for arriving at their verdict of guilty  
were expressed by the presiding judge in the  
following passage of their oral judgment:-

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" After careful consideration of all the  
evidence in the case, we are satisfied beyond  
a reasonable doubt that the injury which  
caused the death of the deceased was inflicted  
by the 2nd Accused.

According to Dr. Chao, whose evidence we  
accept, this injury comprised fractures of  
9 ribs in the front of the chest, caused by  
compression of the chest with some force.  
The sudden pain and shock suffered by the  
deceased as a result of these fractures

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brought about the cardiac arrest, causing her death within one or two minutes. According to Dr. Chao, the fractures of the 9 ribs was sufficient to cause death in the ordinary course of nature, independently of other injuries found on the deceased.

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(continued)

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On the evidence before us, we have no doubt at all that the aforesaid fatal injury was intentionally caused by the 2nd Accused and that it was not caused accidentally or otherwise unintentionally. Consequently, the act of the 2nd Accused in causing the fatal injury was an act which clearly falls within the third limb of the definition of murder, because he intended to inflict that injury within the meaning of the said third limb, and we accordingly find him guilty of murder as defined in the Penal Code".

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The main contention raised before us on behalf of the appellant is that the evidence was insufficient to support the finding that the fatal injury i.e. the simultaneous fractures of the nine ribs in the front of the chest was intentionally caused by the appellant. It is argued that the appellant used violence on the deceased with the intention of subduing her to enable him to rape her and not with the intention to cause the fatal injury. We reject that contention. While it is clear

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that the evidence also establishes that the appellant used violent means with the intention of subduing her in order to commit rape, it is also clear that there was sufficient evidence to support a finding that the appellant also intended to inflict the fatal injury. The trial judges found that the fatal injury was neither accidentally nor otherwise unintentionally caused by the appellant and in the circumstances it is clear that the subjective test involved in the third limb of Section 300 has been satisfied. The law is clear. If the injury that the offender intends causing and does cause is sufficient in the ordinary course of nature to cause death the offence is murder as defined in the third limb of Section 300.

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The only other point raised is that the trial judges, at the trial within a trial, had failed to take into consideration the evidence that five days after the appellant had made a statement before a magistrate on 11th February, he had again appeared before another magistrate but, after preliminary

In the Court of  
Criminal Appeal  
Singapore

—  
No. 5

Judgment of  
the Court of  
Criminal Appeal

4th November  
1974  
(continued)

questions had been put to him by the magistrate, had told the magistrate that he did not wish to make a statement. It is argued that his refusal to make another statement was sufficient corroboration of his evidence during the trial within a trial that he had been threatened, assaulted and promises and inducements had been given to him by police officers before he made his statement on 11th February to a magistrate and that the trial judges had failed to take that into consideration in arriving at their finding that his statement of the 11th February was a voluntary statement.

We reject this contention. The trial within a trial lasted several days and all the evidence including the point now taken was before the trial judges and in our opinion there is no sufficient reason for this Court to take the view that the trial judges had failed to consider all the evidence before them, including the evidence relating to the unproductive appearance of the appellant before another magistrate, in arriving at their decision to admit in evidence the appellant's statement of the 11th February.

Accordingly, the appeal is dismissed.

Sd. Wee Chong Jin,  
CHIEF JUSTICE,  
SINGAPORE.

Sd. T. Kulasekaram  
JUDGE

Sd. Tan Ah Tah  
JUDGE.

SINGAPORE,  
4th NOVEMBER 1974.

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91.

No. 6

CERTIFICATE OF RESULT OF APPEAL - 4th  
NOVEMBER 1974.

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In the Court of  
Criminal Appeal  
Singapore

—  
No. 6

CERTIFICATE OF RESULT OF APPEAL  
CRIMINAL APPEAL NO. 5 OF 1974

Certificate of  
result of  
appeal

IN THE MATTER OF CRIMINAL APPEAL IN SINGAPORE

4th November  
1974

IN THE MATTER OF HIGH COURT CRIMINAL CASE NO.18  
OF 1973

BETWEEN

MOHD YASIN BIN HUSSIN @ ROSLI            APPELLANT

AND

THE PUBLIC PROSECUTOR                    RESPONDENT

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In accordance with the provisions of Section  
57(1) of the Supreme Court of Judicature Act  
(Chapter 15) I hereby certify that the above-  
mentioned Appeal was called on for hearing on the  
14th day of October, 1974 and after reading the  
transcript of the evidence and adjudication and  
conviction and after hearing Mr. Gopalan Raman  
Counsel for the abovenamed appellant and Mr. Gleen  
Knight Deputy Public Prosecutor Counsel for the  
Respondent.

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IT WAS ORDERED that the Appeal do stand  
for Judgment and the same coming on for hearing  
this 4th day of November 1974 in the presence of  
Counsel for the Appellant and the Deputy Public  
Prosecutor Counsel for the Respondent IT WAS  
ORDERED that the Appeal for the above-named  
appellant be dismissed.

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GIVEN under my hand and the seal of the  
Supreme Court this 4th day of November, 1974.

Sd. Michael Khoo Kah Lip  
Deputy Registrar  
Supreme Court, Singapore

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In Judicial  
Committee of  
the Privy  
Council

ORDER GRANTING SPECIAL LEAVE TO  
APPEAL IN FORMA PAUPERIS TO THE  
JUDICIAL COMMITTEE - 14th MAY 1975

No. 7

Order grant-  
ing special  
leave to  
appeal in  
forma pauperis  
to the Judicial  
Committee

14th May 1975

AT THE COUNCIL CHAMBER WHITEHALL

The 14th day of May 1975

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by virtue of the Republic of  
Singapore (Appeals to Judicial Committee) Orders 10  
1966 and 1969 there was referred unto this  
Committee the humble Petition of Mohd Yasin bin  
Hussin alias Rosli in the matter of an Appeal  
from the Court of Criminal Appeal of the Republic  
of Singapore between the Petitioner and The Public  
Prosecutor Respondent setting forth that the  
Petitioner prays for special leave to appeal in  
forma pauperis to the Judicial Committee from a  
Judgment of the Court of Criminal Appeal dated  
the 4th November 1974 which dismissed the Petitioner's 20  
Appeal against conviction of murder and sentence  
of death in the High Court in Singapore on the 15th  
March 1974: And humbly praying Their Lordships to  
grant the Petitioner special leave to appeal in  
forma pauperis against the Judgment of the Court  
of Criminal Appeal dated the 4th November 1974  
and for further or other relief:

THE LORDS OF THE COMMITTEE in obedience to  
the said Orders have taken the humble Petition  
into consideration and having heard Counsel in  
support thereof and in opposition thereto Their  
Lordships do grant leave to the Petitioner to  
enter and prosecute his Appeal in forma pauperis  
against the Judgment of the Court of Criminal  
Appeal of the Republic of Singapore dated the  
4th November 1974.

AND THEIR LORDSHIPS do further order that  
the authenticated copy of the Record produced by  
the Respondent upon the hearing of the Petition  
ought to be accepted (subject to any objection  
that may be taken thereto by the Petitioner) as  
the Record proper to be laid before the Judicial  
Committee on the hearing of the Appeal.

E.R. MILLS,  
Registrar of the Privy Council.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 17 of 1975

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O N A P P E A L

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

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B E T W E E N :

MOHD YASIN BIN HUSSIN @ ROSLI

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

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RECORD OF PROCEEDINGS

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Hale Court  
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Solicitors for the Respondent

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