

Lau Lee Peng v Public Prosecutor
[2000] SGCA 13

Case Number : Cr App 30/1999
Decision Date : 11 March 2000
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA
Counsel Name(s) : Subhas Anandan (MPD Nair & Co) and Lim Chong Boon (Ong Tay & Partners) for the appellant; David Lim Jit Hee (Deputy Public Prosecutor) for the respondent
Parties : Lau Lee Peng — Public Prosecutor

Criminal Law – Offences – Defence of grave and sudden provocation – Two requirements for defence – Subjective requirement of deprivation of self-control – Weight to be given to medical opinion on loss of self-control – Objective requirement that provocation be "grave and sudden" according to standard of "reasonable man" – Nature and proportionality of appellant's reaction – s 300 Penal Code (Cap 224, 1985 Rev Ed)Exception 1

Criminal Law – Offences – Murder – Appellant alleging "low intellect" and grave and sudden provocation – Failure to mention allegations – Charge and warning explained to appellant – Whether drawing of adverse inference appropriate – ss 122(6) & 123(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

(delivering the grounds of judgment of the court): The appellant was charged with and convicted of the crime of murder in causing the death of one Tan Eng Yan @ Tan Ah Leng @ Lily (‘the deceased’). He was sentenced to suffer death. The offence was committed on 26 August 1998, sometime between 1pm and 2.30pm at the deceased’s flat at Block 467, Tampines Street 44, [num]08-140.

We heard the appeal on 24 January 2000 and dismissed it. We now give our reasons.

Evidence led by the prosecution

The deceased and the appellants were friends prior to the killing. They had known each other for some three years. There was no known animosity between them. The deceased worked as a fruit-stall assistant at the market situated at Block 475 Tampines Street 43. Her work for the day would normally end at about 1pm. In the afternoons, she worked as a part-time hairdresser. The appellant was a fishmonger at a neighbouring stall in the same market.

On 26 August 1998, at or about 3.15pm, the deceased’s daughter, one Chen Hui Min, on returning home from school noticed a trail of blood leading to her flat. The iron gate to the flat was wide open, with the padlock hanging from its metal chain. She opened the wooden door and entered the flat. She found the living room in a mess and there were blood stains all over the place. In the toilet adjacent to the kitchen, she saw her mother’s lifeless body lying in a prone position, with her face submerged in a pail of water. The pail was placed under a tap which was still running. She called the police.

Sgt Chua Chee San arrived at the flat some minutes later, at about 3.21pm. Sgt Chua noticed that the deceased had sustained multiple injuries on her head, back and neck. Both her wrists had also been severely injured, with the bones exposed. He also saw that there were bloodstains on the toilet wall and the floor of the flat. A bloodstained chopper lay in the kitchen sink. He further observed that there was a trail of blood which ran from the flat to a parking lot numbered ‘34’ behind Block 469.

The deceased's husband, one Tan Cheng Guan, upon checking the flat later that evening discovered that a sum of S\$6,600 was missing. This amount consisted of S\$2,200 in notes and the balance in coins in denominations of 10 cent, 20 cent, 50 cent and S\$1.

Dr Wee Keng Poh, a forensic pathologist from the Institute of Science and Forensic Medicine who carried out an autopsy on the deceased, noted that she had sustained a total of 58 injuries. The injuries consisted of fatal slash wounds, multiple cuts, bruises, fractures and a ligature mark around her neck. He certified the cause of death to be acute exsanguination or haemorrhage due to multiple slash wounds. Four of the injuries were identified by Dr Wee to be fatal and each of them were sufficient in the ordinary course of nature to cause death. The four fatal injuries were:

(i) injury No 4, a deep slash wound on the left posterior lateral lower neck, measuring 10 cm by 0.8 cm;

(ii) injury No 16, a deep slash wound on the right anterior lateral upper neck, measuring 11 cm by 2.5 cm;

(iii) injury No 44, comprising a set of multiple deep cuts on the back of the deceased's left wrist, causing near total amputation of the wrist, leaving only a strand of skin on the front of the left wrist; and

(iv) injury No 49, comprising a set of multiple slash wounds on the right posteromedial hand and lower third forearm, also causing near total amputation of the right wrist.

In the opinion of Dr Wee, these fatal injuries were all intentionally inflicted and were not caused accidentally. Injury Nos 44 and 49 were caused by multiple blows of moderate to severe force, severely fracturing the underlying bones. These injuries were sustained while the deceased was on the ground trying to ward off those blows. The severity of the blows could be seen from the fact that those blows nearly amputated both her hands. All the injuries the deceased sustained were consistent with having been caused by a knife or a chopper.

The police took blood samples from the flat for examination. Dr Chuah Siew Yeam from the Department of Scientific Services, Institute of Science and Forensic Medicine, who conducted the examination told the court that certain blood samples taken from the flat matched the DNA profile of the appellant. Some blood samples, however, were not his. Nothing turned on that as it was not his defence that he did not kill the deceased.

The appellant was arrested on 31 August 1998. He was referred to the Alexandra Hospital and was examined by one Dr Desmond Choo, who noted, amongst others, that there were lacerations to his right big toe, right hand and foot, right index and middle fingers and a laceration between the index and middle fingers of his right hand. In Dr Choo's opinion, the wounds were likely to have bled when they were fresh.

On the day of his arrest, the appellant led a party of police officers to his motor pick-up bearing registration plate number GH 5364S which was then parked on the third level of the multi-storey car park at Block 96 Havelock Road. The pick-up was rented from one Chua Siong Huat, who ran a business of hiring motor lorries, pick-ups and vans. Six plastic bags of coins hidden behind the driver's seat of the pick-up and another plastic bag of coins placed under the air-condition unit of the vehicle were recovered by the police.

On 23 October 1998 at about 11.25am, three police officers recovered two transparent plastic bags

of coins from Chua Siong Huat`s flat at Block 286B Toh Guan Road [num]21-32. The coins in these two plastic bags were payment made by the appellant to Chua on 28 August 1998, being the rental of S\$400 for the pick-up.

There was evidence that the deceased was a friendly person and mixed well with others. But she was also fond of showing off by taking out stacks of notes from her pouch and boasting that she had a substantial amount of money in her house. The appellant had heard the deceased saying all these things. There was also clear evidence from several other hawkers that as at the date of the incident, the appellant owed them various sums of money. There was also evidence to suggest that the appellant was in debt because he had lost money in horse-racing.

The account concerning the circumstances surrounding the killing of the deceased was provided by the appellant in six written statements given by him to the police. The first was made to D/SSgt Cher Kwong Chan shortly before his arrest on 31 August 1998 (exh P168). The second was a cautioned statement given on 1 September 1998, under s 122(6) of the Criminal Procedure Code (`CPC`), to Insp Lim Song Chai of the Criminal Investigation Department (CID) (exh P170). Thereafter, on four different occasions between 4 and 10 September 1998 the appellant gave four more statements under s 121 of the CPC (exhs P171 to P174). At the trial, the appellant did not challenge the admissibility of any of the statements given by him. The statements were thus admitted in evidence.

As what were set out in the statements were vital to the charge, as well as the defences raised by the appellant, it is necessary for us to set out the relevant parts of his statements in extenso. They are as follows:

Exhibit P168

Blk 467 Tampines on the 8th floor corner house. This male Chinese is known to me for almost a year and I used to address him as `Ah Meng`. I believe `Ah Meng` is a Malaysian.

Initially, I used a flower vase which was placed at the hall to hit deceased`s head and thereafter I used a chopper taken by me from deceased`s kitchen to attack her. Ah Meng also joined in the attack until she collapsed in the kitchen. Ah Meng pulled her head and forced it into a red-coloured plastic pail and left the tap water running over the deceased`s head. Immediately, both of us went in search for money at the flat. I managed to locate four plastic containers of coins at the store-room. Ah Meng also found some cash at the kitchen.

We fled the scene separately. Ah Meng escaped by the lift and as for me, I fled by going down staircase to the car park nearby. I also held the two containers of coins in my hands. I would like to clarify that two of the containers are metal tins. We escaped by using my pick-up No GH5364S which was earlier parked at Blk 469 Tampines carpark.

Exhibit P170 - cautioned statement

I had no intention of murdering her. I went there with `Ah Meng` to find out the whereabouts of the tontine head. She told me that the address was written on a piece of paper which was at home and invited me to follow her to her house. She did not know `Ah Meng`. We took the lift to the 11th floor and walked to her flat at the 8th floor. She opened the door and we entered the house. `Ah Meng` was following us from a distance away. Once the door was opened, `Ah

Meng` dashed into the house and close the door. Lily asked me who `Ah Meng` was? I told her that `Ah Meng` is my friend and asked her not to ask further. She became unhappy. She asked me whether we came to rob her and I denied. I told her to give me `Ah Poh` address. She told me that someone had given her the address on a piece of paper. I saw her started looking for it. Later, she told me that she could not find. I then told her that she was lying. She told me to leave the house or else she would scream for help. `Ah Meng` then placed his arm around her neck and they both fell down. The deceased grabbed a flower vase and I quickly grabbed it from her and placed it on the floor. I was afraid that she might break the vase or she might use it to hit me. Lily ran to the kitchen and `Ah Meng` followed. They struggled at the kitchen. I saw `Ah Meng` used a chopper to slash her. `Ah Meng` did not bring the chopper along. He got it from the kitchen from the washing basin. I presumed he got it from there. I told `Ah Meng` that he cannot slash her. `Ah Meng` told me that he had no choice and asked me to help him. Lily started screaming when they started struggling. After being slashed, Lily fell to the floor. `Ah Meng` used his hand to cover Lily`s mouth or neck. `Ah Meng` asked me to help him. I used the flower vase to hit Lily. Lily caught hold of my hand. I saw the chopper on the floor. I grabbed it and chopped her hand. I became daze and dare not look at her. I told `Ah Meng` not to kill her. `Ah Meng` said that if she survive, I will die. I saw `Ah Meng` pulled her to the bathroom. I had some blood stain on my arm and I washed it at the basin. I do not know what `Ah Meng` was doing with Lily in the bathroom. I knew that he turned on the water tap. I hurried `Ah Meng` to leave the house. `Ah Meng` asked me to look for some money. `Ah Meng` told me to go to the room to search. I just went into the room and opened the drawer and I did not search and take anything. I went to the storeroom. The door of the storeroom was ajar. I saw four tins of coins. `Ah Meng` asked me to take the coins. I went to the kitchen to get the paper bags and put all the coins in the paper bags. We only took the coins without the tins. I again walked to the kitchen and saw a wad of dollar notes and `Ah Meng` took them. I hurried him to leave. We carried the coins and left the place. I walked down the staircase and `Ah Meng` took the lift.

Exhibit P171

3 At about 1.15pm, I parked my motor pick-up at the car park behind block 469 Tampines Street 44 ... When I alighted from my pick-up, I saw Lily was walking at the void deck of block 467 Tampines Street 44 and I shouted for her. I walked across and met her at the lift lobby. She asked me why I was late and she told me that she was about to leave ... She asked me how much I was going to pay her. I told her that I was going to pay her three hundred dollars. I then asked her for `Ah Poh`s address and she said that she had left it in her flat. She told me to follow her if I wanted `Ah Poh`s address.

4 ... She invited me to go into the house. I took off my sandals and entered the house. Lily closed the wooden door. She offered me drink and I accepted. ... I hurried her to give me `Ah Poh`s address. Lily told me that she was also in a hurry to go off for a hair cut appointment. I saw Lily searching the bedrooms, the storeroom, kitchen and the hall for Ah Poh`s address. The last place she searched was among few books placed on the telephone table. Lily told me that she could not find Ah Poh`s address. Lily then started searching the black-coloured bag, which she had earlier placed on the floor near to the kitchen entrance. She told me that it was written on a small piece of paper and she do not know where she placed it. I was angry and she told me to leave as she had to go to work. I told her not to keep on lying to me. I scolded her with vulgar

words. She scolded me that I was mad. I told her that I am getting mad and I will beat her up. She again told me to leave her house I refused and told her to give me Ah Poh`s address. At that time, we were standing facing each other. I pushed her with both hands and she fell. I also fell as the floor was slippery. We struggled on the floor. While we were struggling, Lily told me to talk things over. I told her that she kept lying and did not give Ah Poh`s address to me. I also accused her of conspiring with Ah Poh to cheat me. She denied and asked me to give her sometime to look for Ah Poh`s address. We stopped struggle and stood up. Lily threatened to call the police if I did not leave her house. I became very angry and told her that she need not call for the police and might as well we die together. We were standing near to the kitchen entrance. Suddenly, I saw her lifting a flower vase with both hands. I thought she might use it to hit me. I quickly grabbed over the flower vase and placed it on the floor. The vase toppled but did not break.

5 I tried to block the blow and the cup dropped and breaks [sic]. At that juncture, I become confused and I lost my head. I noticed that there were two to three knives on top of the washing basin. I took a chopper and swung it at her many times. I stopped when Lily collapsed. I put down the chopper on the floor. I was very nervous and my hands were shivering. I then realised that Lily`s neck was bleeding profusely. She was screaming but I could not make out what she was saying. I set my mind to put her to death and I also wanted to die together with her. I also do not know what I was doing. I was squatting beside her. Suddenly, she grabbed my hand. I took the chopper, which was near me and chopped her hands repeatedly as if I was chopping fishes. Shortly, I realised that Lily was motionless and quiet. I was very frightened. My face, hands and legs were stained with blood. I also realised that my right toe was cut. I went to the toilet and turned on the tap to wash up ...

6 After washing up, I saw Lily lying motionless facing downward outside the toilet entrance. I pulled her into the toilet with my both hands. I lifted her head and placed it into the red-coloured plastic basin, which was full of water from the tap. I then decided to leave the house. I went to the doorsteps and put on my sandals. When I was about to leave, I decided to look for any valuables in the house. I returned to the house with my sandals on.

7 I then walked into the bedroom and searched the cupboard drawer hoping that I could find Ah Poh`s address. I left the bedroom after I failed to find Ah Poh`s address. I then realised that the storeroom door was ajar. I checked the storeroom for Ah Poh`s address, but could not find. I saw some coins in tins and plastic containers at the corner of the storeroom. I carried the two tins out from the store room. When I tried to carry the plastic container, I felt that it was very soft and decided not to carry them. There were total two tins and two or three plastic containers. I went to the kitchen and took two plastic bags. I placed the two tins of coins inside the plastic bag. I placed two plastic bags together as the two tins were very heavy. I took another two plastic bags from the kitchen. I went into the storeroom and poured all the coins from the plastic containers into the plastic bags. I also used two plastic bags as it was very heavy. I then decided to leave the house. After second thought, I found that it was very difficult to carry. I went to the kitchen and took two red-coloured pails. I placed the two bags of coins into the pails. I went to the kitchen basin

to wash my hand. When I was leaving the kitchen, I noticed some papers on top of the cabinets near to the entrance. I searched for Ah Poh`s address. I saw some dollar notes wrapped in a transparent plastic bag. I took it and kept in my trouser pocket.

Exhibit P172

21 I now remember that after I managed to block off the cup, which Lily threw at me, I was very angry and I took the flower vase near to the kitchen entrance and rushed towards her. Lily was standing in front of the washing basin with her back facing the kitchen window. If I am not wrong, I hold the rim of the flower vase with my right hand and the base with my left hand., I lifted the flower vase up and hit it on Lily`s head and the vase broke. Lily fell backwards and she was still holding a cup. She tried to hit me with the cup she was holding. I tried to grab the cup from her. Finally, the cup fell but I do not know whether the cup broke or not. Lily was shouting. I took a piece of cloth from the floor to cover her mouth to prevent her from shouting. I then realised that there were pieces of porcelain from the vase scattered around. I used the cloth to sweep them away. Few pieces of broken porcelain were swept into the toilet. It was at that juncture, I saw the chopper in the container on the washing basin. I took the chopper and started to slash her at her neck to prevent her from shouting further. Suddenly, Lily grabbed hold of my hand and I started to chop her hands as if I was mad. I wanted to kill myself at that time. Finally, Lily became motionless and I stopped. I knew that Lily was dead.

...

28 The Saturday before the incident, when I was leaving the market, Lily told me that somebody had given her Ah Poh`s address. As I was in a hurry for horse betting, I did not ask further. The next day, I asked her and she told me that she would give me the address later as she was busy.

29 On Tuesday, I met Lily at the stall and asked for Ah Poh`s address and she told me that she had left it in her flat and asked me to go to her flat to collect it. After I closed my stall I had forgotten about the matter and left with `Allan`.

30 The next day (Wednesday) at about 11am, I again asked her for Ah Poh`s address and also told her that I wanted to pay her some money. She told me to meet her at the void deck of her flat between 1.15pm and 1.30pm.

31 I was angry when Lily did not give me Ah Poh`s address. At that time, I felt she had conspired with Ah Poh to cheat me. I started to quarrel with her resulted into a fight and caused her death.

Exhibit P173	
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Question 1:	In your previous statements recorded on 31 August 98 and 1 Sep 98, you mentioned that `Ah Meng` went to Lily`s flat with you. Who is `Ah Meng`?
Answer :	There is no such person. I did it alone. There was no other person involved. I make it up when I was questioned.

Exhibit P174

... She ... started to search for Ah Poh`s address among a bundle of documents on top of the cabinet ... She then searched the storeroom. I saw some coins in containers when she opened the storeroom door. At that juncture, the phone rang and she answered the phone in Malay. The conversation was short and Lily told me that she was in a hurry to go off. Lily told me to leave. I refused to leave and told her that unless she give me Ah Poh`s address. We started to quarrel and I was very angry. Lily threatened that if I did not leave, she would call the police. I became angry and scolded her vulgar words. Suddenly, I saw Lily took a flower vase and I grabbed it. I placed the flower vase on the floor but it toppled. However, it did not break. Lily ran to the kitchen and I followed. She grabbed a cup from the cabinet and threw it at me. The cup dropped onto the floor. I fought with her in front of the washing machine. Lily fell onto the floor with her head pointing at the window and her legs pointing at the entrance. I quickly ran to the hall and grabbed the flower vase. I used the flower vase and hit Lily`s head. Lily tried to catch hold of me. I noticed that there were few knives in the holder on top of the basin. I took a chopper and started to slash Lily`s neck. Lily still tried to catch hold of me. I was very angry and chopped her hand. I chopped her both hands. She was motionless. I wanted to go to the toilet to wash my legs. There were many pieces of broken porcelain. I used a piece of cloth to sweep them into the toilet. I then washed my legs and hands in the toilet. There was a red-coloured basin underneath the tap. I turned on the tap and used the water in the basin to wash up. I dragged Lily into the toilet either by pulling her hair or her cloth. I lifted her head and placed it into the red-coloured basin with her face facing down. The tap was still running. I walked out of the toilet and noticed that my right toes was bleeding. I went to the bedrooms to search for Ah Poh`s address. I failed to get Ah Poh`s address. I decided to leave. I went to the doorstep and put on my sandals. I was not satisfied and walked back to the kitchen with my sandals on to look for Ah Poh`s address. I cannot find anything but I took a wad of dollar notes from the kitchen cabinet. I walked to the storeroom and took the coins which I had described in my statement. I then left the house with two pails of coins. I closed the wooden door.

I wish to add that after I placed Lily`s head into the basin in the toilet, I came out and picked up the chopper from the floor and placed it in the washing basin. I washed my hands at the washing basin. That is all.

It should be noted from the statements of the appellant that the whereabouts of one `Ah Poh` played a significant part in the occurrence on that fateful afternoon. Ah Poh`s real name is Phai Sai Poh and she was called by the prosecution to testify. She admitted having started a tontine group in August 1996 comprising some 17 members. The appellant was one of them. She discontinued the group on 1 January 1998 as she was in financial difficulties and was unable to pay out money owed to

members who had successfully bid. Because of that she went into hiding at the end of May 1998 and did not tell anyone of her new address. She said she owed the appellant only \$4,000.

Defence

The appellant did not, at the close of the prosecution`s case, make a submission of no case to answer. He gave evidence in his own defence and did not deny having inflicted those injuries on the deceased. His defence was two-fold. First, he inflicted those injuries under grave and sudden provocation from the deceased. Second, that the deceased`s death arose out of a sudden fight between the parties.

The appellant said that he and the deceased were friends. He had borrowed money from her as well as from others due to his gambling losses. He joined Ah Poh`s tontine group some three years back. He had paid Ah Poh in respect of the tontine a total of about \$10,000. She had only repaid him \$1,000 after repeated requests. Thereafter, he could not locate her. Five days before the date of the incident, the deceased told him that she had Ah Poh`s address. However, in the next few days for various reasons, he did not manage to meet up with the deceased to get the address from her. It was on 26 August 1998 that he finally met the deceased at the void deck below her flat. The deceased told him that she could not find Ah Poh`s address and invited him to go up to her flat to help search for it if he did not believe her.

After some searching at her flat, she still could not find the address. So she told him in a normal tone `... **well, couldn`t find, you can`t find Ah Poh you have lost some money, forget about it.**` The appellant got angry when the deceased again told him to forget about it. He accused her of being in collusion with Ah Poh to cheat him. It was at this point that the deceased started using abusive and vulgar language on the appellant.

Go home and fuck your mother. You are a man. How come you are cheated by a woman? You are a man being cheated by a woman. Are you a man?

The appellant became extremely angry and told the deceased that no one had ever used such abusive language on his mother. He, in turn, used abusive words on the deceased, whereupon the deceased asked him to leave the flat, failing which she would call the police. He then gave her a push and they both fell down. There was a struggle and blows were exchanged. The deceased grabbed a flower vase from the living room. She wanted to strike the appellant with the vase but he grabbed it from her and put it on the floor outside the kitchen. She ran into the kitchen. She then threw a porcelain cup at the appellant but it missed hitting his head. The appellant took the flower vase from the floor and told her: `**You want to play?**` to which she retorted: `**Don`t come near . I have a knife here . I will kill you .**` He then told her that they could both die together. Another cup fell on the floor in the appellant`s direction. He rushed at the deceased and hit her on the head with the vase. He saw her stretching out her right hand and thought that she was going to grab a knife on top of the flat surface next to the kitchen sink. In his mind, it was either his life or her life. But he managed to grab hold of the knife first and started slashing her on the neck. The deceased shouted that she would kill him. She then grabbed hold of a piece of the broken vase and tried to `jab` the appellant with it whereupon he slashed at her hands until she became motionless. He said he was frightened. He then washed his bloody hands. His right thumb and toe were bleeding. He proceeded to immerse the deceased`s face in a pail of water and placed the knife which he had used to slash her into the kitchen sink.

Thereafter, the appellant made an unsuccessful attempt to search for Ah Poh`s address in the flat. Instead he found some currency notes in an envelope and coins of various denominations in containers. He took the currency notes and placed the containers of coins into plastic bags which he took from the kitchen. Upon realising that the coins were too heavy for the plastic bags, he transferred the coins into two plastic pails and took them away with him. He drove off in his pick-up.

It should be noted that the significant difference between what the appellant said to the court in his testimony and what he stated in the various statements made to the Police was the absence in the statements of the abuse and/or threats uttered by the deceased. He explained that this was not mentioned in his statements because he was not questioned about the oral exchanges between them. Neither did he mention in his statements that the deceased had tried to reach for a knife next to the kitchen sink.

The decision below

The learned trial judge, Amarjeet Singh JC, rejected both the defences raised by the appellant. He disbelieved the appellant`s testimony that the deceased had used abusive or threatening words on him. Furthermore, his allegation that the deceased had reached out for a knife or chopper on top of the kitchen sink and had `jabbed` at him with a piece of broken porcelain were also disregarded by the trial judge as the appellant had failed to mention any of these matters in his six statements to the Police. As these allegations were only raised for the first time at the trial, the trial judge drew the `irresistible inference` that these allegations were afterthoughts, contrived by the appellant for the very purpose of advancing his defence. With these being rejected what remained, even as alleged by the appellant, were clearly insufficient to constitute grave and sudden provocation. In fact, he held that the appellant caused much of the provocation. The appellant was told to leave the flat but did not. He insisted on remaining in the flat against the owner`s wishes. He had also pushed the deceased first, causing her to fall. Her acts of raising the vase and throwing the two cups at the appellant were thus merely retaliatory of the appellant`s own show of violence. The trial judge could not accept Dr Wee`s evidence that the appellant`s acts were those of a person who had lost his self-control and was in a frenzy, as he felt that the pathologist`s opinion `did not condescend on the totality of the evidence adduced in court.`

In any case, the learned trial judge held that even if the abusive and vulgar words were indeed uttered by the deceased, the insults were not so grave as to cause the appellant to lose his self-control to the extent of so viciously and fatally injuring the deceased.

As regards the defence of sudden fight, the trial judge found that there was no evidence of any fight between the appellant and the deceased of such nature or intensity for the appellant to fear for his life. What the evidence showed was a savage attack by the appellant upon the deceased. The appellant had taken undue advantage and had acted in a most cruel manner. Accordingly, the defence of sudden fight was rejected.

The appeal

Before us, counsel for the appellant pursued only the defence of grave and sudden provocation. The argument advanced was that the learned trial judge placed too much emphasis on the fact that the appellant did not mention about the utterance of the provocative words by the deceased in his statements. Counsel argued that the appellant, being a fishmonger of low intellect, failed to mention

the said words because he did not understand the importance of doing so.

Provocation

Exception 1 to s 300 of the Penal Code (Cap 224) provides that culpable homicide is not murder `if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation ...` The `Explanation` to that Exception provides that `whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.`

How Exception I should be interpreted and applied was recently considered by this court in **PP v Kwan Cin Cheng** [1998] 2 SLR 345 where it held (at p 355):

*As the law has developed, there are two distinct requirements for the provocation defence to apply: first, a `subjective` requirement that the accused was deprived of his self-control by provocation; and secondly, an `objective` requirement that the provocation should have been `grave and sudden`. The latter requirement involves the application of the `reasonable man` test accepted in **Vijayan v PP** [1975] 2 MLJ 8 at p 12; [1975-1977] SLR 100 at p 107 and cited in **Ithinin bin Kamari v PP** [1993] 2 SLR 245 at p 250:*

`In our judgment, under our law, where an accused person charged with murder relies on provocation and claims the benefit of Exception 1 of s 300, the test to be applied is would the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation.

However, the fact that the second requirement is to be determined objectively does not mean that any characteristics of the accused, including mental infirmities, could not be taken into account if they affected the gravity of the provocation. But individual peculiarities which merely affected the accused`s power of self-control but not the gravity of the provocation should not be taken into account: see **DPP v Camplin** [1978] 2 All ER 168 at 175 per Lord Diplock and **Luc Thiet Thuan v R** [1997] AC 131 [1996] 3 WLR 45.

In **Kwan Cin Cheng**, it was held that in determining if the objective requirement was satisfied, the emotional state of mind of the accused at the material time could properly be taken into account as it would affect the gravity of the provocation from the deceased. The purpose of this objective test is really to deny the defence to persons who overreact simply because they are `exceptionally pugnacious, bad-tempered and over-sensitive.`

Some earlier authorities also appear to speak of a separate or distinct requirement of proportionality, over and above the two requirements relating to the defence discussed above. This proportionality test suggests that the retaliation taken must be commensurate with the provocation offered which caused the accused to lose his self-control: **N Govindasamy v PP** SLR 165 [1976] 2 MLJ 49; **Wo Yok Ling v PP** SLR 78 [1979] 1 MLJ 101 and **Koh Swee Beng v PP** [1991] SLR 319 [1991] 3 MLJ 401. In the light of the discussion in **Kwan Cin Cheng**, the test of proportionality is probably not a distinct requirement for raising the defence of provocation. It is a factor to be taken into account in

determining whether the objective test of gravity and suddenness is fulfilled. Therefore, the fact that the retaliatory acts may have been out of proportion to the provocation offered does not necessarily mean that the defence must fail. This is because where the provocation defence in Exception 1 to s 300 is raised, the accused's acts of retaliation would ex hypothesi always have been of an extreme degree, resulting in the death of another person. An inquiry into 'proportionality' does little to answer the essential question of whether an ordinary person would, upon receiving the provocation in question, have reacted in the same way the accused did.

Was the appellant deprived of his self-control

We now turn to determine whether the appellant had, in fact, been deprived of the power of self-control. It is necessary to look at the objective facts. Mere assertion would not suffice. In exh P172, the appellant said that he started to slash at the deceased's neck in order to silence her and to prevent her from shouting further. This would indicate he knew what he was doing. In exh P171, he categorically said that he set his mind to put the deceased to death. These words show that the appellant had a clear purpose in mind when he attacked a vulnerable part of the deceased's body, ie her neck. In court, he testified that as the altercation continued, it became a question of either one of them dying. When the deceased attempted to grab him with her hands in order to defend herself, the appellant aimed specifically at her hands and chopped at them repeatedly. As soon as the deceased became motionless, the appellant, despite claiming that he was frightened, nevertheless had the presence of mind to sweep the broken pieces of porcelain into the toilet to protect himself from being cut. Furthermore, instead of running away in panic after the attack, the appellant took his time to wash his hands, placed the chopper back into the sink and went round the flat looking for Ah Poh's address. He did not find the address but found some money (in notes and in coins) of several thousand dollars, which he took with him. The way he went about taking away the coins showed that he was very conscious at all times of what he was doing. Taking all the foregoing aspects into account, they do not represent the actions of someone who did not appreciate what he was doing. What is just as significant is that, after the incident, he remembered and made it a point to keep his appointments with Lee Hoo Guan (PW13) and Goh Seow Ek (PW15), which were a little later that day. These two persons were the creditors of the appellant. There was no irrational behaviour on his part.

As regards Dr Wee's opinion that the deceased's injuries were likely to have been caused by a person who had lost his sense of self-control and was in a frenzy, we agreed with the trial judge that it was obviously a view based purely on the numerous injuries inflicted by the appellant on the deceased. The court was entitled to test and reject it in the light of the objective facts, if that view was not consistent with those facts. In this instance, for the reasons dealt with in the last paragraph, the trial judge was amply justified not to accept that opinion.

On this ground alone, the appellant would have failed in this appeal, as he had not shown that he had met the first requirement necessary to establish the defence of grave and sudden provocation.

Was the provocation grave and sudden?

We next turn to consider the second requirement. The alleged provocation lay in his assertion in court that the deceased had abused and insulted his mother and himself with vulgar words. Furthermore, the deceased had attempted to reach out for certain knives which were placed on top of the kitchen sink and had threatened to use them to kill him. But these allegations were, however, not mentioned in any of the six statements which the appellant gave to the police.

Before he gave the cautioned statement (P170), he was, as required under s 122(6) of the Criminal Procedure Code, informed that:

If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general.

It is not the appellant's case that the above warning was not read out or explained to him at the time he gave his s 122(6) statement. In fact, Insp Lim Song Chai who recorded the statement specifically stated at the start of the statement that both the charge and the notice of warning were read out, explained and interpreted to the appellant in the Teochew dialect. The appellant did not challenge that.

In relation to the four statements given by the appellant subsequent to the cautioned statement, s 123(1) of the CPC is pertinent and it reads:

*Where in any criminal proceedings against a person for an offence evidence is given that the accused, on being charged with the offence or officially informed that he might be prosecuted for it, **failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so charged or informed, as the case may be, the court, in determining whether to commit the accused for trial or whether there is a case to answer, and the court, in determining whether the accused is guilty of the offence charged may draw such inferences from the failure as appear proper**, and the failure may, on the basis of those inferences be treated as, or as capable of amounting to corroboration of any evidence given against the accused in relation to which the failure is material. [Emphasis added.]*

Counsel for the appellant contended that the appellant, being a fishmonger of low intellect, could have failed to mention the crucial allegations in his statements because he did not understand the importance of doing so at the relevant time. In our view, this argument was plainly unsustainable. We did not see how this argument could be valid as the caution administered was simple enough. In our view the following observation of the trial judges in **PP v Tan Boon Tat** [1990] SLR 375 at 388 [1990] 2 MLJ 466 at 474, which was approved on appeal ([1992] 2 SLR 1), was on point:

*... the warning is couched in very simple language which is easily comprehensible by those who read English. We do not see what else there is and how else one ought to explain the warning; it is certainly unsafe to simplify it or, on the other hand, to elaborate or amplify it; any such attempt may convey a wrong meaning or implication to the accused. It follows **that if an accused does not read and speak English, and the charge and the notice of warning are both accurately interpreted to him in a language which he understands, it would, in our opinion, amount to an explanation to him of the charge and the warning; he would have understood from the interpreter the substance of the charge and the implication of the warning.** [Emphasis added.]*

There was another reason why we thought the claim that the appellant was of low intellect could not

stand. In his first two statements he had the presence of mind to think of `Ah Meng` to bear responsibility for the crime, which person he later admitted did not exist. He tried to explain that it was the way in which the police questioned him that made him think of `Ah Meng`. This was never put to the police officers when they testified. So he was not of such low intellect after all. He was clever enough to think of a fictitious person to bear the brunt of the blame for the killing. And with that kind of a mind, how could he have missed out those alleged abuses or threats uttered by the deceased, or the actions of the deceased in trying to reach out for the knives, if those things did in fact occur?

What inference should ultimately be drawn under s 122(6) and 123(1) of the CPC against an accused for an omission is really a matter of judgment for the trial judge, who would no doubt consider it in the light of the nature of the omitted fact(s) in relation to the charge the accused faced. Another pertinent factor would be whether any challenge has been raised by the accused concerning the adequacy of the explanation given to him. There could also be other factors. But in so far as the present case was concerned, it was not alleged that the explanation given was inadequate. Having heard the appellant`s evidence, the trial judge was certainly entitled, in the circumstances here, to draw an adverse inference against the appellant. There was simply no basis for this appellate court to interfere with that determination.

Therefore, what remained to found provocation were just these: that the deceased had failed to give the appellant Ah Poh`s address; that she told him to leave the house and threatened to call the police if he did not; that, on his refusal, she had lifted a vase intending to throw at him; that on being pursued to the kitchen she threw one or two porcelain cups at him. In the words of the trial judge:

I found that the accused in fact caused much of the provocation. He had no special relationship with the deceased. He was told to leave the flat. He did not. He was told that she would call the police. He still did not leave the flat. She was entitled to ask him to leave the flat and call for the police or eject him from it as it was her home. The accused was wanting to remain there against her wishes. He had also in pushing her and causing her to fall used physical violence on her first. Her raising the porcelain vase after that (which he grabbed from her), her throwing of two cups at him were as far as her acts were concerned objectively not grave acts of provocation. She was only responding to the accused`s laying his hands on her.

Looking at all the circumstances objectively, the only thing one could consider the deceased to be at fault was that she could not find the address of Ah Poh after having made a search. By no stretch of the imagination could that have amounted to a grave and sudden provocation. Indeed thereafter, as the learned trial judge rightly pointed out, it was really the appellant who was creating trouble and the deceased was merely reacting. It was clear to us that the appellant had grossly overreacted to the situation before him. Even accepting that the appellant was angry at the deceased for failing to find Ah Poh`s address, a reasonable person in the position of the appellant would not have reacted to the situation in the way the appellant did with such extreme violence. As mentioned before, the defence of grave and sudden provocation is not to protect those who are exceptionally pugnacious, bad-tempered or over-sensitive.

The question may be asked what was the reason or motive for the killing. The prosecution had not expressly suggested any motive and it was not necessary to do so. Its only burden was to show that the appellant intended to inflict the injuries caused, and this burden it had discharged beyond a reasonable doubt. The fact that the appellant might not have gone to the deceased`s flat with the intention of killing her was immaterial. There is no requirement in law that a premeditated design to kill

must be established. If the intention to kill is proved to exist, however sudden such an intention was formed, that would amount to murder: see **Shaiful Edham bin Adam v PP** [\[1999\] 2 SLR 57](#). In this case the appellant did in fact kill the deceased.

Judgment

For the reasons given above, we were satisfied that the defence of grave and sudden provocation was clearly not available to the appellant and we, accordingly, dismissed the appeal.

Outcome:

Appeal dismissed.

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