

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM
THE COURT OF CRIMINAL APPEAL OF SINGAPORE
(CRIMINAL APPEAL No 1 OF 1978)

B E T W E E N

HAW TUA TAU

Appellant

-V-

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
1.	Grounds of Decision of the High Court of the Republic of Singapore	17 April 1978	1-12
2.	Petition of Appeal	7 Dec 1978	13-25
3.	Oral Judgment of the Court of Criminal Appeal	7 Sept 1979	26-34
4.	Certificate of Result of the Appeal	7 Sept 1979	35
5.	Verbatim notes of the hearing in the High Court of The Republic of Singapore	6 March 1978 15 March 1978 17th March 1978	36 37-8-9 40-41
6.	Order of Court allowing the Appeal	17 December 1980	42

DOCUMENTS TRANSMITTED TO PRIVY COUNCIL BUT NOT PRODUCED

No.	Description of Document	Date	Volume
1.	Notes of Evidence taken at Preliminary Enquiry	17 March 1977	
2.	Verbatim Notes of the Record of Appeal	6 March 1978 to 8 March 1978	I excluding page 2
3.	Verbatim Notes of the Record of Appeal	9 March 1978 to 13 March 1978	II
4.	Verbatim Notes of the Record of Appeal	14 March 1978 to 17 March 1978	III excluding pages 619 to 621 and 754 to 755
5.	Exhibits of the Appeal		IV

1

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Criminal Case

No. 31 of 1977

PUBLIC PROSECUTOR

vs.

HAW TUA TAU

Coram: F.A. CHUA, J.
A.P. RAJAH, J.

GROUND OF DECISION

The accused, Haw Tua Tau, was charged, tried and convicted on the following two charges:

" That you, HAW TUA TAU, on or about the 12th day of December, 1976 at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Phoon Ah Leong, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103). "

" That you, HAW TUA TAU, on or about the 12th day of December, 1976 at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Hu Yuen Kheng, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103). "

The scene of the incident was the Margaret Drive hawkers centre. Phoon See operated a stall No. 538 selling roast pork, roast duck and wan tan mee. Phoon See was assisted by his three sons Phoon Hon Sun, Phoon Hon Pun and the deceased Phoon Ah Leong and by his daughter Phoon Kai Kiew and a female assistant Leong Ah Kum. The deceased Hu Yuen Kheng was the wife of Phoon See and she occasionally assisted in the stall.

The accused also operated a stall in the same hawkers centre, stall No. 506, selling pork satay and oyster omelette. He was assisted in his stall by his wife, Chan Lee Kheng, his daughters, Haw Swee Gek (13 years old), Haw Swee Heok (12 years old), Haw Swee Noi (11 years old) and a female assistant, Soh Poh Choo.

The prosecution evidence shortly was this. Prior to the date of the incident there had been petty differences between the two stalls, Nos. 538 and 506, relating to the cleaning of their respective tables by members of the other stall.

On the day of the incident, at about 6 p.m., the female deceased Hu Yuen Kheng was sitting at a table placed against the closed door of stall 540 having her dinner.

At about that time a customer, who had sat at a table belonging to stall 538 and had ordered food from both stalls 538 and 506, finished his meal. When the customer left the male deceased Phoon Ah Leong shouted across to stall 506 to the people there to come and collect their plates. Following this, one of the accused's daughters came over, collected the plates but did not wipe the table. This annoyed Phoon Ah Leong and he grumbled loudly at the girl's conduct. Some other customers came and sat at this table which had to be cleaned.

At about this time a customer who had sat at one of the tables of stall 506 and who had ordered and consumed a plate of roast duck left the table. Phoon Ah Leong went over to that table to collect the plates after which he wiped the table and swept some duck bones on to the floor in front of stall 506.

Phoon Ah Leong then returned to his stall and stood in front of it. He was then flanked by his brother Phoon Hon Pun on his right and by the female assistant Leong Ah Kum on his left. At about this time two female customers, Wong Moi Chin and Heng Siew Khim, approached Phoon Ah Leong to place their orders.

At this time the accused left his stall carrying in his right hand a bearing scraper wrapped in paper and he walked over to stall 506 to where Phoon Ah Leong was standing receiving his orders from the two female customers.

The accused stood in front of Phoon Ah Leong and asked him in an angry tone: "What were you saying just now?" Even before he finished saying this the accused thrust the

bearing scraper, which he was holding, into the left chest of Phoon Ah Leong. The accused then withdrew the bearing scraper and blood spurted out from the left chest of Phoon Ah Leong. Then Phoon Ah Leong's mother, the deceased Hu Yuen Kheng, came crying "What is the matter?", "What is the matter?" The accused and Hu Yuen Kheng struggled. In the meanwhile Phoon Ah Leong collapsed. Leong Ah Kim went to his assistance and, with the help of Yeo Hee Kiat and Chan Seng Chong, she dragged Phoon Ah Leong away from the scene to a passage way and left him there and where he soon died. After struggling with the accused Hu Yuen Kheng ran to the passage way bleeding from her chest and shouting for her husband who had gone to another stall for his meal. She collapsed at the end of the passage way and soon died there.

The accused also attempted to stab Phoon Hon Pun who lifted his left arm to ward off the blow and sustained a wound on his left forearm. Phoon Hon Pun then ran into his stall 538. In the stall were his sister Phoon Kai Kiew and his brother Phoon Hon Sun. Phoon Hon/^{Pun} quickly told his sister that their brother Phoon Ah Leong had been stabbed and was bleeding. Phoon Kai Kiew then attempted to run out of the stall but was met at the entrance by the accused who stood there thrusting the weapon in his hand at her. She avoided the thrusts and her elder brother Phoon Hon Sun, who had just cut up a duck for a customer with a chopper, swept her deeper into the stall and then swung the chopper at the accused at the stall's entrance to ward him off.

The accused then retreated to his stall with his left arm bleeding. The eating area was in an uproar as customers fled in panic, tables were overturned and bottles and stools were thrown between the occupants of these two stalls 538 and 506.

For a brief period the accused had stationed himself in his stall and had thrown bottles and stools at stall 538 where Phoon See and his sons retaliated in kind.

The accused eventually retreated, on his wife's

entreaties, towards Margaret Drive. He was pursued by Phoon Hon Sun, still armed with his chopper, who intended to intercept his escape. Phoon Hon Sun had also attempted to stop the accused with a stool but on seeing him still armed with the bearing scraper he had allowed the accused to pass by. The accused's wife, Chan Lee Kheng, had attempted to block Phoon Hon Sun's pursuit of her husband with a stool and in the melee between her and Phoon Hon Sun was cut on her arm. Soh Poh Choo, her assistant, who had tried to intervene, also sustained a cut on her right wrist from Phoon Hon Sun's wielding of the chopper in his hand.

The accused eventually made good his escape with his wife to Margaret Drive. From there they went to the Singapore General Hospital where the accused was warded while his wife was treated as an outpatient.

The police arrived at the scene soon after. A search of the area failed to result in the recovery of the weapon used by the accused.

That same night the accused was arrested at Ward 52 of the Singapore General Hospital. The accused sustained the following injuries:-

- " (1) a compound fracture of the lateral condyle of the left humerus communicating with a 4 cm. long incised wound on the postero-lateral aspect of the left elbow;
- (2) 3 cm. long laceration on the right little finger;
- (3) two 1 cm. long laceration right ring finger;
- (4) 2 cm. long superficial laceration on the anterior aspect of the left chest wall;
- (5) multiple scratch marks on the front of the neck;
- (6) multiple abrasions of the right leg just below the knee. "

He was operated on soon after admission for his compound fracture.

The bodies of the two deceased were removed on the same night to the Singapore General Hospital Mortuary. The next day Dr. Chao Tze Cheng, Senior Forensic Pathologist,

performed autopsies on the two bodies. He found that each of the deceased had sustained a tri-radiate stab wound through the heart and that these were the fatal injuries. He certified the cause of death in each of the cases as "haemorrhage from stab wound in the heart." Hu Yuen Kheng, in addition, sustained a second tri-radiate stab wound in her abdomen but this did not injure any of her vital organs. The doctor said "The triangular wounds on both bodies have similar external characteristics, the measurements were the same and were consistent with being caused by a triangular shape instrument like a bearing scraper. The wounds on the male and the female corpses were likely caused by the same instrument." The doctor also said that the stab wound on the male deceased was 13 cm. deep and the stab wound to the heart on the female deceased was 16 cm. deep and that these two wounds were caused by a direct thrust and that considerable force would be necessary to cause those injuries.

On 13th December, 1976, at about 10.25 a.m. the accused was brought from the Singapore General Hospital to the C.I.D. to see Inspector Leong Kong Hong. Two statements were volunteered by the accused to Inspector Leong that day between 10.35 a.m. and 11.30 a.m. The defence did not object to the admission of these two statements and they were admitted in evidence.

On the charge of murdering Phoon Ah Leong the accused volunteered this statement:

" If he did not rush forward with the chopper, I would not have stabbed him. Luckily it was my wife who warded off the blow. That is all. "

On the charge of murdering Hu Yuen Kheng the accused volunteered this statement:

" When I was having an argument with her son, the old woman who was chopping the "char siew" then came forward with the chopper and chop me. I then used my left hand to cover my head so as to ward off the blow. I then seized the cucumber knife which was hanging in my stall and stabbed her. "

The witnesses called by the prosecution who described the actual stabbing of Phoon Ah Leong by the accused were

Leong Ah Kum, Phoon Hon Sun both of stall 538, the two female customers, Wong Moi Chin and Heng Siew Khim, who at the time were placing orders with Phoon Ah Leong and Chan Seng Chong who was a customer seated at a table at stall 510 25 to 30 feet away from stall 538 having a drink and facing towards stall 538 having been attracted in that direction by the two attractive girls Wong Moi Chin and Heng Siew Khim. In addition to seeing the stabbing of Phoon Ah Leong by the accused, Chan Seng Chong also saw Hu Yuen Kheng rushing up to Phoon Ah Leong after he had been stabbed and he saw the accused struggling with Hu Yuen Kheng.

The accused's evidence was this. Prior to the day of the incident there had been petty quarrels between his stall and the Phoon stall over the cleaning of the tables. Two or three months prior to the 12th December, 1976, he made an implement from the leg of a wooden stool. The implement had a rounded handle, one end was sharp pointed and the portion beyond the handle was three sided and looked like a bearing scraper. He could use this implement as a substitute for the leg of a stool which had corroded. He could also use it to scrape the dross from the bars of his satay grill. Having made this implement he wrapped it with a piece of newspaper and kept it on the lower shelve of his showcase at the stall together with two or three pieces of rags used for wiping the tables.

On the 12th December, 1976, at about 6 p.m. he was in his stall frying oyster omelette for a customer. He heard Phoon Ah Leong calling out to his stall to collect plates. Two of his young daughters went to collect the plates. Shortly after they came back and at this stage Phoon Ah Leong came over to his stall to collect some plates from a table. Phoon Ah Leong swept the duck bones and remnants of rice towards his stall and some landed on the floor and some on his stall itself. Phoon Ah Leong then left and returned to his own stall.

He had then finished frying the oyster omelette and he heard Phoon Ah Leong and the female employee Leong Ah Kum

grumbling about their table not being properly cleaned by his daughters. On hearing this he grabbed hold of a piece of rag from the lower shelf of the show case and walked out of his stall towards stall 538 intending to properly clean the table there and at the same time he was expecting that this act of his would prompt the people of stall 538 to come over to his stall to clear the duck bones from the floor.

He went up to a place at stall 538 where there were two tables, one of which he thought was the one which it was alleged had not been properly cleaned. However, he saw that both the tables were clean. Phoon Ah Leong was then standing in front of his stall. He addressed Phoon Ah Leong. He said "My friend" and at the same time he turned his body and pointed towards his stall intending to ask Phoon Ah Leong to go over there to sweep away the duck bones, but before he could say anything he heard one word "Fuck" and he felt a blow on his left temple. What took place after that is best put in the accused's own words.

The accused said:

" On receiving the blow I fell on to the floor on my right. My right thigh landed on the floor first, the side of my right knee. As I was flat on the floor I looked immediately towards Ah Leong. I saw him rushing at me. At photo P 7 I fell here (in between the two stools in the background on the left and the two tables on the right) Ah Leong grabbed hold of my neck with his left hand. I do not know if he was aiming at my collar or directly at my neck. At the same time I saw him holding a chopper in his right hand. He was in the process of slashing me with the chopper from top to bottom. I raised both my hands intending to push him away. I got up immediately and at the same moment I pushed forward with both my hands. When I pushed forward I was already standing. When I pushed forward I was still holding the piece of rag in my right hand. When I pushed forward Ah Leong retreated. When I pushed forward my hands came into contact with Ah Leong's body. When Ah Leong retreated I retreated. I only took one step backwards and I stood still. I did not notice how far Ah Leong retreated. I did not pay much attention as at that moment Ah Leong's mother rushed forward towards me. She was carrying a chopper in her right hand. As she came forward she was holding the chopper high above her head and she was in the process of slashing down at my head. I raised my left arm in this manner to ward off the blow (placing his left hand on the top of his head) and at the

same time I pushed my right hand forward. I think I then pushed my right hand forward twice. When I pushed my right hand forward I felt my left arm had come into contact with the chopper and my right hand had come into contact with the body of Ah Leong's mother. The chopper landed on my elbow. When I pushed my right hand forward I was still holding this piece of rag. After pushing my right hand forward twice I put my right hand down to my side. My left elbow was injured; I felt severe pain and I could not raise my arm. At the same time I heard the sound "Pok", sound of something breaking. I could not tell from where but I thought it would be from my injured elbow. I did not notice what happened to Ah Leong's mother. I was in a daze and was in semi-conscious state.

As I stood still I saw one of the brothers standing inside stall 538, he was wearing spectacles (Hon Sun). Ah Kiew was also inside the stall. Hon Sun was holding a chopper in his right hand. He was wielding the chopper as if he was going to slash at me.

To Court: He was in the stall just at the entrance.

He was 3 to 4 feet away from me. I did not come in contact with Hon Sun; we only stared at each other.

I then realised that I was bleeding from my left elbow and that there was blood in my right hand and also that I was holding a stick in my right hand. This stick was the implement that I had made. I took a step backwards and when I realised that Hon Sun was not coming at me I retreated to my stall. At this stage my left arm was bleeding profusely and my right hand was full of blood. At this stage in my right hand was the implement and the piece of rag.

The rag was this size ($2\frac{1}{2}$ x 1 ft.) like a piece of face towel. That rag was in a lump.

I walked backwards to my stall. As I was walking back I did not transfer the implement and rag to my left hand. I was feeling extreme pain from the wound in the left elbow.

At the time I realised I was holding the implement there was blood all over the implement. Originally the implement was wrapped in a piece of paper and when I realised it was the implement the paper could not be seen; the paper was covered with blood as well as the piece of rag. The rag was also covered with blood. "

The accused then said that when he reached the front portion of his stall Phoon Hon Pun attacked him with a stool and he was hit on the back. He dashed into his stall and Phoon Hon Pun threw the stool into the stall and ran away. Subsequently Phoon See, Phoon Hon Sun and Phoon Hon Pun threw bottles into the stall. He retaliated by throwing empty bottles at them. He threw a total of about ten bottles and he felt giddy and was in great pain. He ran out of his stall followed by his wife and Phoon Hon Sun chased them. His wife fell and Phoon Hon Sun attacked her with a chopper. Someone came and warded off the blow with a stool. He asked his wife to run. They both ran along the passage way next to the car park and on to the car park. He threw the wooden implement which he had in his hand into a dustbin near the public toilet in the car park. They ran to Margaret Drive, stopped a passing car and they were taken to the Singapore General Hospital where he was warded.

Later he was placed under arrest in the ward. He was operated on that night. After the operation his left arm was still hurting him. He lost consciousness and only came to the following morning when CID detectives came and took him away.

He gave an explanation as to the two cautioned statements made by him. His evidence was this:

" I remember making 2 statements to Inspector Leong. (K: To the first charge you made following statement "If he did not rush forward with the chopper, I would not have stabbed him. Luckily it was my wife warded off the blow").

I was asked by the Inspector whether I meant to say that if Ah Leong did not rush forward I would not have warded off this blow. At time when statement was recorded I was too excited and I was dazed and I told the Inspector that I stabbed Ah Leong. I intended to say Ah Leong rushed forward and I wanted to push him away. When I made this statement I presumed I knew that these 2 persons had died from stab wounds; I was confused. (K: The second sentence "Luckily it was the blow"). This sentence has no connection with the first sentence. This refers to a subsequent episode, the one when I saw Hon Sun wanting to slash my wife when she was on the floor outside stall 504.

(K: The second statement "When I was having stabbed her". "Having an argument").

What I meant was Ah Leong rushed at me and at that very same moment Ah Leong's mother rushed forward and attempted to slash me with the chopper.

(K: You referred old woman chopping char siew).

Earlier I saw her chopping char siew, this was before I went over to the other side. At time I came out of the stall to speak to Ah Leong I had already seen her chopping char siew.

(K: You mentioned "cucumber knife").

I did mention cucumber knife in my statement, but at time the statement was recorded I was in a daze. However subsequently I did clarify with the Inspector that the cucumber knife was not used; I clarified after a lapse of some days, but I don't know how many days.

I received my injury from the old woman. She attempted to slash me with the chopper and she succeeded.

To Court: She delivered only one blow.

When I made the two statements I was dazed. Before I came down from Changi Hospital I was given an injection. I made a mistake; I meant I was given anti-biotics. I don't know at which hospital. I don't know if I was sent to Changi Hospital before or after I made the two statements. It was due to the anti-biotic injection that I was dazed. I was also in pain; my arm was in plaster. "

To put it shortly the accused's version of the incident was this. He was attacked by Phoon Ah Leong, who first punched him and when he was on the floor tried to attack him with a chopper. He got up immediately and at the same time pushed Phoon Ah Leong with both his hands. At this stage Phoon Ah Leong's mother rushed at him with a chopper. He raised his left arm over his head to ward off the blow and pushed his right hand forward twice to push her away and he received a blow on his left elbow from the chopper. He did not know that he had the sharp-pointed wooden implement in his hand when he pushed Phoon Ah Leong and his mother away to ward off their chopper attacks. He was under the impression that he was holding a piece of rag until later

when he discovered that together with the rag there was the wooden implement which was then covered with blood.

We rejected the accused's version. We had no hesitation in coming to the conclusion that the accused's version was a concoction thought out by him to present first a version that he had acted in self-defence when he inflicted the fatal injuries on the two deceased, and secondly a version that with the frantic movements of his hands to push away the two deceased he had accidentally stabbed them in the heart as he did not know at that time that he had the wooden implement resembling a bearing scraper in his right hand.

In his cautioned statements he had used the word "stab" and not the word "push" and he had said that he "seized the cucumber knife" and stabbed Hu Yuen Kheng. When he made these two statements he had quickly concocted two stories with regard to the stabbing so as to present a version that he had acted in self-defence. When he realised that these two stories given in the statements could not bear close examination he gave yet another version to the Court.

The accused's defence that he was not aware that he had the implement in his hand and that the injuries were inflicted accidentally was untenable. It is clear that it was impossible for the two fatal injuries, which had penetrated the hearts of the two victims, to be caused by pushing in the manner described by the accused. The testimony of the pathologist was that considerable force was necessary to inflict those wounds.

We accepted the version of the incident as given by Leong Ah Kum and Phoon Hon Sun and their evidence was amply corroborated by three independent witnesses - the two female customers Wong Moi Chin and Heng Siew Khim and Chan Seng Chong who was at stall 510.

Although there was no direct evidence of anyone having seen the accused stab Hu Yuen Kheng, the totality of

the evidence pointed only to one conclusion that it was the accused who stabbed her.

On the evidence before us we found that the accused knowingly carried a bearing scraper when he went to stall 538 to confront Phoon Ah Leong; that the stab wound on Phoon Ah Leong and the two stab wounds on Hu Yuen Kheng were inflicted by the accused with the bearing scraper that he carried; that there was no truth in accused's allegation that he was assaulted and attacked with a chopper by Phoon Ah Leong and that he was attacked by Hu Yuen Kheng with a chopper and that she inflicted the wound on his left elbow; that the two deceased did not attack the accused in any way; that the stab wounds on the two deceased were not inflicted accidentally or in a sudden fight or under grave and sudden provocation; and that all the injuries suffered by the accused were inflicted on him after he had stabbed and wounded both the deceased.

We had no doubt that the accused intentionally inflicted the stab wounds on the two deceased, which caused their death, and that when he inflicted those wounds he did it with the intention of killing them.

We therefore found the accused guilty on both the charges and he was convicted.

F. A. Chua
.....
(F. A. CHUA)
Judge

A. P. Rajah
.....
(A.P. RAJAH)
Judge

Dated this 17th day of April, 1978.

Filed this 7th day of December 1978.

173

IN THE COURT OF CRIMINAL APPEAL OF THE REPUBLIC OF
SINGAPORE

Criminal Appeal No. 1 of 1978

(In the Matter of High Court
Criminal Case No. 31 of 1977)



Between

HAW TUA TAU - Appellant

And

PUBLIC PROSECUTOR-
- Respondent

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT OF CRIMINAL APPEAL

S H E W E T H :

The Petitioner, the accused herein, having given Notice of Appeal against conviction and sentence of the offences of murder punishable under Section 302 of the Penal Code Chapter 103 and sentence of death passed on him by the Honourable Mr Justice F C Chua and Mr Justice A P Rajah on the 17th of March 1978 states the following grounds of Appeal:-

1. The learned trial judges in rejecting the evidence of the accused and accepting the version of the incident of the Prosecution erred in law and in fact in that they approached the case upon the basis of which two conflicting stories to believe instead of considering whether the accused's explanation was consistent with his innocence

- 2 -

and whether it might reasonably be true even though the Court might not be convinced of its truth.

2. The learned trial judges erred in fact in coming to the conclusion "that all the injuries suffered by the accused were inflicted on him after he had stabbed and wounded both the deceased" in that:-

- i) the only other Prosecution witness who was in a position to cause the injuries to the accused, especially the serious compound fracture of his left arm and the scratch marks on his neck categorically denied causing the injuries when he chased the accused with a chopper in his hand after the accused's attack on the deceased persons.
- ii) there was a complete lack of any explanation or evidence from any of the Prosecution witnesses as to how the accused came to suffer a compound fracture of his left arm.
- iii) the compound fracture of the arm with part of the bone of the elbow sliced through was consistent with that being caused by a sharp instrument or a chopper and in the absence of any Prosecution evidence contradicting the manner in which the accused came to suffer the injury the accused's version that it was caused by the deceased Hu Yuen Kheng when she charged at him wielding a chopper in her hand should be considered in his favour.

iv) there is a complete absence of Prosecution evidence as to how:-

- a) the scratch marks came about on the front of the accused's neck;
- b) the multiple abrasions were suffered by the accused on his right leg just below the knee; whereas the accused explained that they resulted when the deceased Phoon Ah Leong hit him on the left side of his head causing him to fall on the side of his right knee after which the deceased grabbed his neck with his left hand near the collar of his shirt whilst holding a chopper in his right hand.

3. The learned trial judges erred in not considering the injuries sustained by the accused referred in paragraph 2 hereinbefore as corroboration of his account of the incident in question.

4. The learned trial judges in believing the version of the two main Prosecution witnesses Leong Ah Kum and Phoon Hon Sun:-

- a) did not give any consideration to the distinct possibility that they were interested witnesses and their testimony tainted, the former being an employee of the stall which the deceased persons' family owned and the latter a relative of the said deceased persons.

b) did not consider the fundamental contradiction and its effect, in the evidence of the Prosecution witnesses - between that of Leong Ah Kum and Phoon Hon Sun that they were both standing in front of stall 538 together with the deceased Phoon Ah Leong when the incident happened and that on the other hand of Wong Moi Chin and Heng Siew Khim who were customers that the deceased Phoon Ah Leong was standing alone.

5. The learned trial judges erred in giving undue weight to:

a) the accused's use of the word "stab" in reference to the deceased Phoon Ah Leong in the first statement he made to the police under Section 121 (6) of Cap. 113 and

b) the reference that he "seized the cucumber knife" and stabbed Hu Yuen Kheng the other accused,

i) in the light of the evidence on record that the accused had been brought to the police station at about 10 a.m. on the morning of the 13th of December 1977 after he had undergone an operation some 10 hours earlier under general anaesthesia;

ii) in view of the unchallenged evidence of the accused that he had after the statement clarified to Inspector Leong Kong Hong that the cucumber knife was not used;

iii) the confusion of thought which is apparent in the first statement concerning the death of Phoon Ah Leong which shows no logical connection between the first sentence "if he did not rushed forward with the chopper I would not

have stabbed him and the only other sentence following, "Luckily it was my wife who warded off the blow. That is all."

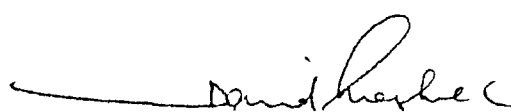
6. The learned trial judges erred in law in admitting as an exhibit P59 - a bearing scraper which was not the weapon of offence and its admission was prejudicial to the accused.

7. The learned trial judges erred in fact in holding that the defence of the accused that he was unaware that he had a wooden implement resembling a bearing scraper was untenable in that the learned judges failed to consider adequately the evidence that the implement was wrapped in a piece of rag which the accused grabbed from the shelf of his stall as he was disturbed by the continuing complaining of the deceased Phoon Ah Leong that his table belonging to his stall had not been cleaned properly and which the accused was hastening to clean.

8. The learned judges did not adequately consider the accused's defence of accidental stabbing having regard to all the evidence and your Appellant's conviction is therefore unreasonable.

Your Petitioner prays that the convictions may be quashed and the sentence set aside and such order may be made as justice may require.

Dated this 7th day of December 1978


Solicitors for the Appellant

The address for service of the above-named Appellant is care of Ms David Marshall, 1st floor Bank of China Chambers Battery Road, Singapore 1.



IN THE COURT OF CRIMINAL APPEAL OF THE
REPUBLIC OF SINGAPORE

Criminal Appeal No. 1 of 1978
(In the Matter of High Court
Criminal Case No. 31 of 1977)

Between

HAW TUA TAU - Appellant

And

PUBLIC PROSECUTOR - Respondent

PETITION OF APPEAL

Filed the 7th day of December 1978

DAVID MARSHALL
ADVOCATES AND SOLICITORS
SINGAPORE



IN THE COURT OF CRIMINAL APPEAL OF THE REPUBLIC OF
SINGAPORE

THE

Criminal Appeal No. 1 of 1978
(In the Matter of High Court
Criminal Case No. 31 of 1977)



Between

HAW TUA TAU - Appellant

And

PUBLIC PROSECUTOR - Respondent

SUPPLEMENTAL PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT OF CRIMINAL APPEAL

S H E W E T H :

978

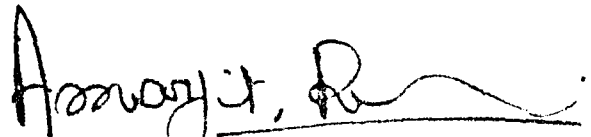
1A There was a miscarriage of justice in that the learned trial judges did not give adequate consideration to evidence tendered on behalf of the defence and that they have not adequately considered the defence of provocation and self-defence.

1B There was a miscarriage of justice in that the learned trial judges did not consider the evidence in regard to the Second Charge separately but lumped the evidence together and as a result your Petitioner was gravely prejudiced.

1C The learned trial judges erred in holding that the accused intentionally inflicted the stab wounds on the two deceased.

1D The learned trial judges erred in law in not considering whether the prosecution has proved a case beyond reasonable doubt in respect of each Charge and further erred in failing to consider the dangers of convicting a person purely on circumstantial evidence and especially in respect of the 2nd Charge.

Dated this 17th day of February 1979


SOLICITORS FOR THE APPELLANT

The address for service of the abovenamed Appellant is care of Messrs. Amarjit, Rubin & Partners, 1801-1803, 18th floor, Straits Trading Building, Battery Road, Singapore 1.

19

IN THE COURT OF CRIMINAL APPEAL OF
THE REPUBLIC OF SINGAPORE

Criminal Appeal No. 1 of 1978
(In the Matter of High Court
Criminal Case No. 31 of 1977)

Between
HAW TUA TAU - Appellee
And
PUBLIC PROSECUTOR- Respon

SUPPLEMENTAL PETITION OF APPE

M/s. Amarjit, Rubin & Partner
1801-1803, 18th floor
Straits Trading Building
Battery Road
Singapore 1

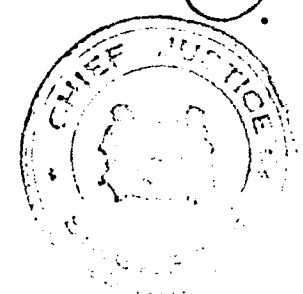
Filed this 17th day of February

Filed this 4th day of April 1978

22

10

IN THE COURT OF CRIMINAL APPEAL OF THE REPUBLIC OF
SINGAPORE



Criminal Appeal No. 1 of 1978

(In the Matter of High Court
Criminal Case No. 31 of 1977)

Between

HAW TUA TAU - Appellant

And

PUBLIC PROSECUTOR - Respondent

ADDITIONAL SUPPLEMENTAL PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT OF CRIMINAL APPEAL

S H E W E T H :

1E There is a miscarriage of justice in that :

- (i) the learned trial judges failed to direct their minds and consequently failed to draw the attention of your Petitioner his right to make an unsworn statement about the facts instead of giving evidence on oath but instead warned your Petitioner that he was not entitled to make a statement without being sworn or affirmed and they further warned your Petitioner that if he did give evidence he must do so on oath or affirmation and be liable to cross-examination (page 619 of Volume III, Record of Appeal); and

(ii) in so warning your Petitioner the learned trial Judges erred in applying the amended provisions of the Criminal Procedure Code which came into effect on 1st January 1977 for offences said to be committed on the 12th December 1976 and charges which were preferred against your Petitioner on the 13th December 1976 [page 38 of Volume IV (exhibit P51); page 42 of Volume IV (exhibit P53) and page 105 of Volume I, Record of Appeal] whereas your Petitioner had a substantive right to make an unsworn statement or to remain silent under the provisions or law applicable prior to 31st December 1976 since the amended provisions of the Criminal Procedure Code did not have any retrospective effect.

1F Your Petitioner contends that if the said amendments were to be held retrospective then such amendments are void (under Article 52 of the Constitution of Singapore insofar it relates to incidents prior to the 31st day of December 1976) as being repugnant to Article 7 of the Federal Constitution which applies to Singapore by virtue of the Republic of Singapore Independence Act, 1965.

1G Your Petitioner further contends that in not being given the right to give an unsworn statement about the facts he was unfairly discriminated and such discrimination or unequal treatment is contrary to the letter and spirit of

274

(12)

3

Article 8 of the Federal Constitution which as aforesaid
applies to Singapore.

Dated this 9th day of April 1979

Amarjit, Rubin
SOLICITORS FOR THE APPELLANT

The address for service of the abovenamed Appellant is
care of Messrs. Amarjit, Rubin & Partners, 1801-1803, 18th floor,
Straits Trading Building, Battery Road, Singapore 1.

25

IN THE COURT OF CRIMINAL APPEAL OF
THE REPUBLIC OF SINGAPORE

Criminal Appeal No. 1 of 1978

(In the Matter of High Court
Criminal Case No. 31 of 1977)

Between

HAW TUA TAU - Appellant

And

PUBLIC PROSECUTOR - Respondent

SUPPLEMENTAL PETITION OF APPEAL

M/s. Amarjit, Rubin & Partners
1801-1803, 18th floor
Straits Trading Building
Battery Road
Singapore 1

Filed this 17th day of February 1979

IN THE COURT OF CRIMINAL APPEAL OF THE
REPUBLIC OF SINGAPORE

Criminal Appeal No. 1 of 1978

(In the Matter of High Court
Criminal Case No.31 of 1977)

Between

Haw Tua Tau ... Appellant

And

Public Prosecutor ... Respondent

Coram: Wee Chong Jin, C.J.
T. Kulasekaram, J.
D.C. D'Cotta, J.

JUDGMENT

On December 12, 1976 the appellant, Haw Tua Tau, caused the death of two persons, Phoon Ah Leong and Hu Yuen Kheng. He was arrested on the same day and on December 13, 1976 he was produced before a magistrate and charged on two separate charges with having caused the death of these two persons in circumstances amounting to murder. Eventually, on March 6, 1978 the appellant was brought before the High Court for trial on these two charges which read as follows:-

First Charge -

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Phoon Ah Leong, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

Second Charge -

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Hu Yuen Kheng, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

The High Court convicted the appellant on both charges and sentenced him to suffer punishment by death. He now appeals against his conviction and sentence.

At the close of the prosecution's case the court called upon the appellant to enter upon his defence on both charges. Chua, J., the presiding trial judge said:-

"Will you tell the accused that we find that the prosecution has made out a case against you on both the charges on which you are being tried which if unrebutted would warrant your conviction. Accordingly, we call upon you to enter upon your defence on both the charges.

Before any evidence is called for the defence we have to inform you that you will be called upon by the court to give evidence in your own defence. You are not entitled to make a statement without being sworn or affirmed and accordingly if you give evidence, you will do so on oath or affirmation and be liable to cross-examination. If after being called by the court to give evidence you refuse to be sworn or affirmed or having been sworn or affirmed, you, without good cause, refuse to answer any question, the court in determining whether you are guilty of the offence charged, may draw such inferences from the refusal as appear proper.

There is nothing in the Criminal Procedure Code which renders you compellable to give evidence on your own behalf and you shall accordingly not be guilty of contempt of

court by reason of a refusal to be sworn or affirmed when called upon by the court to give evidence. We now call upon you to give evidence in your own defence. If you have any difficulty in deciding whether or not you wish to give evidence on your own behalf you may consult your counsel."

The appellant elected to make his defence on oath.

When the trial commenced the relevant provisions governing the procedure relating to criminal trials before the High Court are contained in the following sections of the Criminal Procedure Code (Ch.113) namely:-

"S. 181 (1) When the case for the prosecution is concluded the court, if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction, shall record an order of acquittal, or if it does not so find, shall call on the accused to enter on his defence.

(2) Before any evidence is called for the defence, the court shall tell the accused that he will be called upon by the court to give evidence in his own defence and shall tell him in ordinary language what the effect will be if, when so called upon, he refuses to be sworn or affirmed, and thereupon the court shall call upon the accused to give evidence.

S. 182 (1) The accused or his advocate may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution.

(2) He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

(3) If any accused person elects to be called as a witness, his evidence shall be taken before that of other witnesses for the defence.

(4) Any accused person who elects to be called as a witness may be cross-examined on behalf of any other accused person.

(5) The accused shall be allowed to examine any witness not previously named by him under the provisions of this Code if that witness is in attendance.

S. 186A (1) In any criminal proceedings except an inquiry preliminary to committal for trial, the accused shall not be entitled to make a statement without being sworn or affirmed, and accordingly, if he gives evidence, he shall do so on oath or affirmation and be liable to cross-examination; but this subsection shall not affect the right of the accused, if not represented by an advocate, to address the court otherwise than on oath or affirmation on any matter on which, if were so represented, the advocate could address the court on his behalf. /he

(2) If the accused --

(a) after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or

(b) having been sworn or affirmed, without good cause refuses to answer any question,

the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

(3) Nothing in this section shall be taken to render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a refusal to be sworn or affirmed in the circumstances described in paragraph (a) of subsection (2).

(4) For the purposes of this section a person who, having been sworn or affirmed, refuses to answer any question shall be taken to do so without good cause unless --

- (a) he is entitled to refuse to answer the question by virtue of subsection (4) of section 120 of the Evidence Act or of any other written law or on the ground of privilege; or
- (b) the court in the exercise of its discretion excuses him from answering it.

(5) Nothing in subsection (2) shall apply to an accused if it appears to the court that his physical or mental condition makes it undesirable for him to be called upon to give evidence."

Section 181(2) and Section 186A are recent provisions which were enacted by Parliament and assented to by the President on August 24, 1976 by an Act entitled the "Criminal Procedure Code (Amendment) Act, 1976" which Act came into operation on January 1, 1977.

The appellant contends that there has been a miscarriage of justice in that the High Court erred in applying these two recent additions to the Criminal Procedure Code which were not the law of the land when he was first charged before a court on the two charges on which he was subsequently tried and convicted by the High Court. The submission is that the appellant had a substantive right which accrued to him when he was first charged on December 13, 1976 to make an unsworn statement under the law as it stood before Section 181(2) and Section 186A came into operation on January 1, 1977 and that these two new sections could not have the retrospective effect of depriving him of his accrued substantive right. It is submitted that the High Court

when calling on the appellant to enter on his defence should have drawn his attention to his right to make an unsworn statement instead of warning him that he was not entitled to make a statement without being sworn or affirmed.

Mr. Rubin, on behalf of the appellant, in support of his submission relies on the decision of this court in Mohamed Salleh v. Public Prosecutor (1969) 1 M.L.J. 104 where at page 105 the court stated:-

" In our judgment, the right of an accused at his trial on a criminal charge to make an unsworn statement from the dock is not a procedural right but a substantive right of an accused and accordingly does not depend on whether or not there is a specific provision for it in the Criminal Procedure Code. It seems to us beyond doubt that under our system of administration of justice, and it has been so throughout the entire history of our courts, a person accused of a criminal offence before an established court of justice has at his trial, as part of his defence, the right to make an unsworn statement from the dock if he wishes to do so. In our view this right can be taken away only by an express statutory provision to that effect."

In that case the submission on behalf of the appellant was that as there was no specific provision in the Criminal Procedure Code for an accused person at his trial to make an unsworn statement from the dock, it was an irregularity for the trial judge to tell the appellant that he had a choice of either giving evidence on oath from the witness box or making an unsworn statement from the dock. The court rejected that submission on the ground that at his trial an accused person has the right

to make an unsworn statement from the dock if he wishes to do so even if there is no specific provision for it in the Criminal Procedure Code.

In our opinion, it is clear from the passage at page 105 we have cited that this court in Mohamed Salleh's case was of the view that the right of a person charged with a criminal offence to make an unsworn statement from the dock is a right which vests in him "at his trial". In the present case, before the trial of the appellant the legislature by Section 186A of the Criminal Procedure Code, which section came into operation on January 1, 1977, had expressly taken away the right of an accused person at his trial to make an unsworn statement from the dock. In our opinion when the trial of the appellant commenced in March, 1978 the procedural provisions of Section 186A governed the trial.

Another contention advanced on behalf of the appellant is that if the present Section 181(2) and Section 186A had retrospective effect so as to deprive the appellant of his right to make an unsworn statement from the dock or to remain silent, rights which accrued to him when he was first charged on December 13, 1976, then these two statutory provisions are void as being repugnant to Article 7 of the Malaysian Federal Constitution which is law in Singapore by virtue of the Republic of Singapore Independence Act 1965.

Article 7 of the Malaysian Federal Constitution

reads:-

"7. Protection against retrospective criminal laws and repeated trials.

(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted."

Having regard to the opinion we have expressed on the first contention of the appellant this contention must also fail. In any event these two new sections plainly do not contravene the provisions of Article 7.

Although the Petition of Appeal raises numerous grounds of appeal which are related to the evidence before the trial judges and their verdict of guilty, these grounds have not been seriously pressed in argument at the hearing of the appeal. Nevertheless, we have gone through the entire Record of Appeal with considerable care and are satisfied that the evidence was overwhelmingly against the appellant. The evidence disclosed that the appellant intentionally and deliberately inflicted the fatal injuries on two unarmed persons. There were independent eye-witnesses to these brutal killings whose evidence the trial judges accepted. The trial judges

rejected the appellant's defence that he was not aware that he had a bearing scraper in his hand and that the injuries he inflicted were accidental.

Accordingly, the appeal is dismissed.

Lee Chng Jui
CHIEF JUSTICE,
SINGAPORE.

T. Kulasekaram
(T. Kulasekaram)
Judge.

D.C. D'Gotta
(D.C. D'Gotta)
Judge.

SINGAPORE, 7th September, 1979.

CERTIFICATE OF RESULT OF APPEAL

CRIMINAL APPEAL NO 1 OF 1978

IN THE MATTER OF CRIMINAL APPEAL IN SINGAPORE

(In the Matter of High Court Criminal Case No 31 of 1977)

BETWEEN

HAW TUA TAU

.. APPELLANT

AND

THE PUBLIC PROSECUTOR

.. RESPONDENT

In accordance with the provisions of Section 57(1) of the Supreme Court of Judicature Act (Chapter 15) I hereby certify that the abovementioned Appeal was called on for hearing on the 23rd day of April 1979 and after reading the transcript of the evidence and adjudication and conviction and after hearing Mr Mohideen M.P. Haja Rubin, Counsel for the Appellant, and Mr E.C. Foenander, Deputy Public Prosecutor, Counsel for the Respondent:

IT WAS ORDERED that the Appeal do stand for Judgement and the same coming on for Judgement this 7th day of September 1979 in the presence of Mr Mohideen M.P. Haja Rubin, Counsel for the Appellant and Mr E.C. Foenander, Deputy Public Prosecutor, Counsel for the Respondent.

IT WAS ORDERED that the Appeal be dismissed.

GIVEN under my hand and the seal of the Supreme Court this 7th day of September, 1979.

DEPUTY REGISTRAR
SUPREME COURT, SINGAPORE

THE ACCUSED IS CHARGED:

FIRST CHARGE -

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Phoon Ah Leong, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

ACCUSED CLAIMS TRIAL.

SECOND CHARGE -

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Hu Yuen Kheng, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

ACCUSED CLAIMS TRIAL.

Chua J.: Yes, tell him to stand down.

Yes, Mr. Foenander.

D.P.P.: My Lord, I would like to apply for a joint trial of these two charges. My learned friend has no objection.

Mr.Khosa: I have no objection, my Lord.

Chua J.: Yes.

(D.P.P. opens and calls the evidence).

A Chua, J.: Will you ask the accused to stand up.
Will you tell the accused that we
find that the prosecution has made out
a case against you on both the charges
on which you are being tried which
B if un rebutted would warrant your
conviction. Accordingly, we call upon
you to enter upon your defence on both
the charges.
Before any evidence is called for the
C defence we have to inform you that you
will be called upon by the court to
give evidence in your own defence.
You are not entitled to make a statement
without being sworn or affirmed and
D accordingly if you give evidence, you
will do so on oath or affirmation and
be liable to cross-examination. If
after being called by the court to give
evidence you refuse to be sworn or
E affirmed or having been sworn or affirmed,
you, without good cause, refuse to
answer any question, the court in
determining whether you are guilty of the
offence charged, may draw such inferences
from the refusal as appear proper.
F

(ctd.)

A Chua, J.: There is nothing in the Criminal
 Procedure Code which renders you
 compellable to give evidence on
 your own behalf and you shall
 accordingly not be guilty of contempt
 B of court by reason of a refusal
 to be sworn or affirmed when called
 upon by the court to give evidence.
 We now call upon you to give evidence
 in your own defence. If you have
 C any difficulty in deciding whether
 or not you wish to give evidence
 on your own behalf you may consult
 your counsel.

 Accused: My Lords, may I consult my counsel
 D first?

 Chua, J.: Yes.

 Mr. Khosa: My Lords, may I be permitted to see him
 for some duration to clarify certain
 points so that I can start at 2.30,
 E my Lord?

 Chua, J.: First of all, he wants to consult you.
 He himself must tell us what he wants
 to do.

 Mr. Khosa: Very well.

 (Accused consults Mr. Khosa)

 Accused : I will make my defence, my Lord, on oath.

A

Chua, J.: Now you are seeking a adjournment
for what reason?

Mr. Khosa: I have a few points to clarify
with my client, my Lord.

Chua, J.: We will resume at 2.15 then.

B

(Court adjourns @ 12.25 p.m., 15.3.78.)

4.30 p.m.
17.3.78.

Hearing resumes.

Chua J.: Will you ask the accused to stand up,
Mr. Interpreter, and interpret to him
what I am about to say?

Interpreter: Yes, my Lord.

Chua J.: On the evidence before us, we find that you
knowingly carried a bearing scraper wrapped
in a newspaper when you went to stall 538
to confront Phoon Ah Leong.

The evidence is clear, and it is not disputed
by you, that the stab wound on Phoon Ah Leong
and the two stab wounds on Phoon Ah Leong's
mother were inflicted by you. We find that
they were inflicted with the bearing scraper
that you were carrying.

We reject your story that you were assaulted
and attacked with a chopper by Phoon Ah Leong
and that you were attacked by Phoon Ah Leong's
mother with a chopper and that she inflicted
the wound on your left elbow. We find that
these two deceased did not attack you in any
way.

We find that the stab wounds on the two
deceased were not inflicted accidentally
or in a sudden fight or under grave and sudden
provocation.

We find that all the injuries suffered by

Chua J.: you were inflicted on you after you had
(contd.)

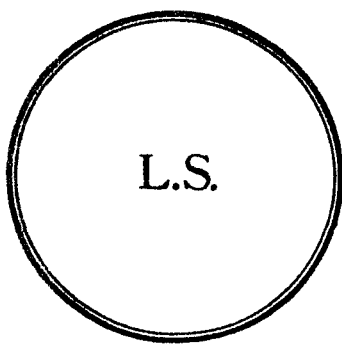
stabbed and wounded the two deceased.

We find that you intentionally inflicted the stab wounds on the two deceased, which caused their death, and that when you inflicted those wounds, you did it with the intention of killing them.

We find you guilty on both the charges and you are convicted.

(SILENCE IS CALLED - DEATH SENTENCE PASSED).

(Court adjourns at 4.32 p.m., 17.3.78).



42

At the Council Chamber Whitehall

The 17th day of December 1980

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 1966 and 1969 there was referred unto this Committee a humble Petition of Haw Tua Tau 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 formâ pauperis* to the Judicial Committee from a Judgment of the Court of Criminal Appeal dated 7th September 1979 which dismissed the Petitioner's Appeal against his conviction in the High Court in Singapore for two offences of murder: And humbly praying Their Lordships to grant the Petitioner special leave to appeal *in formâ pauperis* against the Judgment of the Court of Criminal Appeal dated 7th September 1979 or 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 special leave to the Petitioner to enter and prosecute his Appeal *in formâ pauperis* against the Judgment of the Court of Criminal Appeal of the Republic of Singapore dated 7th September 1979.

AND THEIR LORDSHIPS do further order that the copy of the Record produced by the Petitioner be accepted (subject to any objection that may be taken thereto by the Respondent) 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.