

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)

RAYUAN JENAYAH NO: N - 05 - 7 - 03

ANTARA

ABDUL AZIZ BIN MOHD SHARIFF ... PERAYU

DAN

PENDAKWA RAYA ... RESPONDEN

[Dalam perkara mengenai Perbicaraan Jenayah No.45-8-2000
Dalam Mahkamah Tinggi Malaya Di Seremban,
Negeri Sembilan

ANTARA

PENDAKWA RAYA

DAN

ABDUL AZIZ BIN MOHD SHARIFF]

KORAM

MOHD GHAZALI MOHD YUSOFF, HMR
RAUS SHARIFF, HMR
HELILIAH MOHD YUSOF, HMR

GROUND OF JUDGMENT

1. This is the unanimous decision of the court.
2. The appellant was convicted for the murder of one Balakrishnan a/l Karuppusamy (“the deceased”) and was sentenced to death in accordance with section 302 of the Penal Code (“the Code”). The appellant appealed against his conviction to this court. We had dismissed the appeal and our grounds for doing so are as follows.
3. The offence was committed on 7 April 2000 sometime at about 10.30pm at house No. 50, Blok 3, Felda Palong 11, Ladang Geddes, Gemas, district of Jempol, Negeri Sembilan (“the said house”). The deceased was living in the said house with his wife, Patmavathi a/p Sreeni (SP3). They have seven children. The eldest child is a daughter named Leelawathi who was a Form 3 student at the material time.
4. In her evidence SP3 testified that at about 9.30pm on 7 April 2000, i.e., the day of the incident, whilst she was at home with the deceased, there was a knock on the kitchen-door to the said house. The deceased who had just finished his dinner and was washing up went to open the door. Upon opening the door, the appellant who was then wearing a face mask rushed in. There was struggle between the appellant and the deceased and in the midst of it, the appellant

slashed the deceased at the neck with a parang. When the deceased fell on to the floor, the appellant sat on his body and began slashing the deceased's stomach with the parang. SP3 attempted to stop the appellant and managed to take off the appellant's face mask but in the midst of the struggle was also slashed with the parang. The appellant then left the said house by the kitchen-door. She screamed for help. Later somebody called for an ambulance.

5. Under cross-examination, SP3 said that she knew the appellant since 1998. She also agreed that the appellant was courting her daughter Leelawathi sometime in 1998 which resulted in a quarrel between the deceased and the appellant over that relationship. She also agreed that strong words were used during the quarrel.

6. L/Kpl Mohd Fauzi Shukur (SP17) who was attached to the Pondok Polis Felda Palong 12 since 1996 testified that on 13 March 1998, the deceased came to the said police post and lodged a report against the appellant. The report read as follows -

“Pada jam l/kurang 1.00pagi 13/3/98 saya balik kerumah saya dirumah saya di No.50 Felda Palong (11) dapati anak perempuan saya nama Nilapathi baru balik kerumah juga saya pun bertanya kepadanya diberitahu baru balik berjumpa dengan Abdul Aziz. Selepas itu saya pun pergi berjumpa dengan Abdul Aziz yang menumpang tinggal dirumah abangnya di No. 53, Blok 3, Plg 11. Apabila saya berjumpa dengannya dan bertanya mengapa

mengganggu anak saya, berlakulah satu pertengkaran dengannya.
Oleh sebab itu saya datang ke Pondok Polis Plg 12 buat report.”

7. Mohd Hisham Abd Hamid (SP5), a hospital assistant who at the material time was attached to the Klinik Kesihatan Palong 9,10 and 11 testified that at about 11.00pm on the day of the incident, he received a call for an ambulance. He then rushed to the said house and saw the deceased lying in a pool of blood. Upon checking, he concluded that the deceased was dead. He left the body there and later brought SP3 to the Klinik Kesihatan Palong where he treated her wounds and subsequently sent her home. He was of the view that the two wounds on SP3 which required stitching were caused by a sharp object like a knife or parang.

8. Aminah Mohd Shariff (SP8), the appellant’s sister, who was residing with her family at house No. 53 Felda Palong 11 which was situated behind the said house testified that on the day of the incident, the appellant who was living with their mother at Taman Penarikan, Bahau came to her house at about 8.00pm on a motorcycle bearing registration No. 3774. He was wearing a belt. There was a parang in a sheath hooked on to his belt. She testified that he looked drunk and smelt of liquor. The appellant then had dinner with her. He informed her that the deceased had scolded him and accused him of being a drunkard and a thief. He looked angry and so she advised him to ignore what people say

about him and to go home. After dinner, he left her house saying that he was going to look for honey.

9. SP8 then said at about 11.00pm -12.00pm whilst she was asleep, she heard the appellant calling her. The appellant then entered her house and sat on the floor. She noticed that his hand was bleeding. She took a sarong and used it as a bandage for the wound. The appellant then asked her to call her son named Amir Hussain (SP9), who was 14 years old at the material time, to send him home as he was not in a position to ride his motorcycle on his own.

10. SP9 confirmed that on the day of the incident, the appellant came to his house in a drunken stupor and left at about 9.00pm. He came on motorcycle bearing registration No. 3774. He then said at about 11.00pm -12.00pm the appellant again came to his house. His hand was bleeding and was wrapped in a piece of cloth which was soaked with blood. When SP9 asked why he was bleeding, the appellant said that he fell from a tree where he was taking honey. SP9 then sent the appellant to his house in Rompin on the said motorcycle. During the journey, the appellant who was riding pillion requested him to send him to the house of one Ganes Krishnan (SP6). SP6, who was then at home went to look for a motorcar to send the appellant to the hospital.

11. In his evidence, SP6 testified that at about 2.00am on

8 April 2000, whilst he was sleeping in his house at Kawasan Ladang New Rompin, Jempol, the appellant came with SP9 on a motorcycle. He noticed that the appellant's hand was bleeding and was wrapped with a piece of cloth. The appellant informed him that he fell from a tree while looking for honey and was injured by his parang. When he saw that the appellant's shirt was soaked with blood, he took it off and soaked it in a pail and gave the appellant another shirt to put on. He then asked for help from a neighbour, one Martua Chairulama bin Abdul Rahman (SP7) who owned a motorcar, to send the appellant to the hospital. They then went to pick up the appellant's mother before sending the appellant to the hospital. The appellant was ordered by the doctor who examined him to be warded and hence they left him there. Prior to sending the appellant to the hospital, he kept the parang, the motorcycle and the blood-soaked shirt in his house. Later, a team of police officers who were looking for the appellant came to his house and took the parang, the motorcycle and the blood-soaked shirt.

12. Dr Nasir Abd Malek (SP16) who was on duty in the Kuala Pilah Hospital on 8 April 2000 was informed about the appellant at about 5.00am. He testified that according to the hospital's records, the appellant was brought to the hospital's emergency unit at about 3.30am and was treated

for his wounds. He then examined the appellant. He opined that the appellant's wounds may have been caused by a sharp object like a knife or parang.

13. The investigation officer of the case, ASP Asuar Hj Rahmat (SP4) testified that he was informed of the incident at about 1.30am on 8 April 2000. He then went to the scene of the crime at about 2.00am with a police team to conduct investigations. He saw the deceased, who was wearing a pair of blue shorts without a shirt, lying on the floor in a pool of blood. He found him to be dead. He also met SP3. He then instructed his men to bring the body to the Kuala Pilah Hospital by police vehicle. At about 4.00am a police dog team arrived at the scene of the crime and the dog led the police to SP8's house. He found blood stains at the back-door of the house and also in the house. At about 4.55am he proceeded to SP6's house at Ladang New Rompin. He later met SP6 who then informed him that the appellant was sent to the Kuala Pilah Hospital. He then instructed another police team to go to the hospital and arrest the appellant. He seized from SP6 the motorcycle, the parang and the appellant's shirt which was being soaked in a pail. He also discovered blood-stains on the front mudguard of the motorcycle. In the course of further investigation he seized a pair of "Adidas" track suit bottom from the appellant's house.

14. Dr Rajasingam a/l Ramasamy (SP2), a doctor and a

pathologist who was as the material time attached to the Kuala Pilah Hospital testified that at about 1.30pm on 8 April 2000, he conducted a post-mortem on the deceased. He said that the deceased was identified by Inspector Richard Akin (SP14) and one Jayapardiam a/l Karuppusamy who was the deceased's brother. He testified that the cause of death was a "stab injury to the heart" and was of the view that the injuries found "could have been caused by a long sharp weapon which can go through like a parang". He said -

"An instrument like this parang can cause the injuries on the deceased.

A "stab" is an incised wound whereby the depth is longer than the length of the injury."

He described the injuries that he discovered during the post-mortem that he conducted on the deceased as follows -

“1. An incised wound 5cm places horizontally on the right side of the forehead and 7cm above the right eyebrow.

2. The incised wound 7cm placed vertically on the mid upper aspect of the forehead and 7.5cm above the medial end of the left eyebrow, i.e., close to the middle. A corresponding incised wound was seen on the skull surface measuring 3cm.

3. An incised wound 17cm placed over the mid clavicular line on the right inner aspect of the shadder joint and directed medially.

4. Superficial abrasion 13cm x 4cm was noted over the outer front aspect of the right shoulder joint.

5. An incised wound 8cm over the right upper side of the front chest slanting inwards from the right of the neck to midline.
6. A superficial incised wound 7cm in length, 2cm below and parallel to injury No. 5. This wound begins at the lower end of injury No. 5 and extended downwards and inwards.
7. An incised wound 7cm directed vertically over the inner upper of left arm just below the axilla.
8. An incised wound 3cm placed obliquely over the lower back aspect of the right forearm 4cm above the wrist joint.
9. An irregular superficial abrasion 13cm x 6cm over the front aspect of the middle third of the right upper arm.
10. Incised stab wound 'V' shaped 7cm x 3.5cm over the lower first of left chest 7cm below the nipple in the mid clavicular line. This injury has penetrated the chest cavity through the 8th intercostal space directed upwards and inwards causing a stab wound on the lower lobe of the left lung measuring 2.5cm. This wound extended to cut the pericardium on the front of the heart and further completely cutting obliquely through the heart and exposing the entire ventricular and artial cavity. The aorta and the pulmonary track were both severed at its origin."

15. At the conclusion of the case for the prosecution and after hearing submissions proffered by the learned deputy public prosecutor and learned counsel for the appellant, the learned trial judge ruled that the prosecution has made out a *prima facie* case against the appellant on the offence

charged and consequently called upon the appellant to enter on his defence.

16. The appellant elected to give evidence on oath. In his evidence-in-chief he said that he was acquainted with the deceased's daughter, Leelawathi in March/April 1998. The deceased scolded him when he came to know about the relationship. About one month later after that incident he went to SP8's house and met Leelawathi near SP8's house. They had a conversation for about half an hour and she then left. At about 5.00pm the same day, the deceased came with a stick and scolded him for mixing with his daughter. After that incident, he did manage to meet Leelawathi on a few other occasions.

17. The appellant then said that on 7 April 2000 he and a few of his friends drank toddy in the afternoon. In the evening the same day he went to SP8's house at about 8.00pm. SP8 scolded him for being drunk. He then had dinner and left SP8's house at about 9.00pm. On his way home on his motorcycle, he happened to pass the deceased who was travelling in the opposite direction also on a motorcycle. The deceased made some sign at him and

uttered some words which he could not make out. Consequently he turned around his motorcycle and went back to SP8's house with the intention of looking for the deceased. He wanted to know why the deceased had behaved in that way towards him.

18. Upon reaching SP8's house, he saw the deceased standing behind the said house. The back-door to the said house was ajar. The deceased scolded him. He then approached the deceased and asked what the latter said to him when they passed each other on the road earlier. The deceased who was standing at the back-door of the said house then tried to hit him. There was a scuffle. During the scuffle, the deceased grabbed hold of his parang and managed to take the parang out from its sheath. He was cut when he tried to hold on to his parang. The deceased then managed to drag him into the said house. During the scuffle they both fell. He managed to get back possession of the parang and then ran to SP8's house. As he was scared to inform SP8 as to what had happened, he rode away on his motorcycle with the intention of going home. After travelling a short distance away, he fainted and fell from his motorcycle. He then left it there and walked back to SP8's

house. Upon arrival, he informed SP8 that he fell from a tree while collecting honey. SP9 then brought him on his motorcycle to SP6's house. SP6 took off his blood-soaked shirt and gave him another shirt to wear. SP6 managed to rent a motorcar and sent him to the Kuala Pilah Hospital. He left his parang in SP6's house. He also informed the doctor treating him that he fell from a tree and hurt himself. He was later arrested by the police.

19. The appellant insisted that when he went to meet the deceased he had no intention of killing him. He also denied having stabbed the deceased. He further said that during the scuffle with the deceased, he did not see the deceased's wife, i.e., SP3.

20. Six witnesses were called by the defence. SD2, SP8's son said that he remembered the incident in 1998 when the deceased came to SP8's house with a stick and wanted to beat the appellant for talking to Leelawathi. SD4, a friend of the appellant, said he drank toddy with the appellant in the afternoon on the day of the incident.

21. SD5, SP8's husband remembered an incident in 1998 where he and the deceased went to look for the appellant

and Leelawathi who was then not at home. The deceased had then suspected that his daughter had ran away with the appellant. When they came back from the search, they met the appellant in front of his (SD5) house whereupon the deceased threw a punch at the appellant. He managed to calm both parties.

22. SD6, a neighbour of the deceased said that the deceased and SP8 were quarrelsome. SD7, another neighbour of the deceased also said that the deceased was quarrelsome.

23. At the conclusion of the trial, after considering all the evidence before him, the learned trial judge found that the prosecution has proved its case beyond reasonable doubt and consequently found the appellant guilty of the offence of murder as charged and convicted him. The appellant appealed.

The appeal

24. Before us, counsel for the appellant raised four issues, namely -

(a) that the deceased has not been sufficiently identified;

(b) that the deceased's wife (SP3) testified that she saw the

appellant slash the deceased whereas the doctor (SP2) who conducted the post-mortem on the deceased said that the fatal injury could have been caused by a fall on the weapon;

(c) that the learned judge never considered the evidence of SD5, SD6 and SD7, namely, that these three witnesses for the defence adverted to previous acts of provocation by the deceased; and

(d) that the learned trial judge misdirected himself and erred in law when he only considered exceptions 1 and 2 of section 300 of the Penal Code; he did not consider exceptions 3 and 4 of section 300 and also section 299 of the Penal Code.

25. We find no merits on the first issue raised, that is, that the deceased has not been sufficiently identified. The evidence showed that when SP5, the hospital assistant went to the said house, SP3, the deceased's wife was there with the deceased's body lying on the floor. When SP4, the investigation officer of the case went to the said house at about 2.00am on 8 April 2000, he met SP3 and saw the deceased's body lying on the floor. The evidence also showed that SP2, who conducted the post-mortem on the deceased, testified that the deceased was identified by Inspector Richard Akin (SP14) and one Jayapardiam a/l Karuppusamy who was the deceased's brother. We are of

the view that these facts showed that the deceased has been sufficiently identified.

26. On the second issue raised, we are of the view that this is really a non-issue. SP2 testified that the cause of death was a stab injury to the heart. It was only under cross-examination and obviously in answer to a suggestion put by counsel for the defence was when he said that it is also possible that such an injury could have been caused by someone falling on the parang. This was what he said under cross-examination -

“A ‘stab’ is an incised wound whereby the depth is longer than the length of the injury.

Someone who has stabbed the deceased with a parang could have caused such an injury.

It is also possible that the injury could have been caused by someone falling on the instrument.”

It is clear that SP2 was speaking generally when he opined as such. Consequently, we cannot see any contradiction with the testimony of SP2 and the evidence of SP3 who said that she saw the appellant slashing away at the body of the deceased.

27. The third issue raised by counsel relates to the defence of provocation. He argued that the learned trial judge never

considered the evidence of SD5, SD6 and SD7, which were not seriously challenged by the prosecution, with regards to previous acts of provocation by the deceased, namely -

(a) SD5, the husband of SP8, said that on 12 March 1998 the deceased and the appellant had a quarrel when the deceased noted that his daughter Leelawathi was missing from home that day. During the quarrel the deceased punched the appellant.

(b) SD6, who was the deceased's neighbour said that the deceased was a quarrelsome person and had on one occasion sometime in 1997 called her a prostitute. She informed her husband (SD7) about it and he later confronted the deceased armed with a parang. The deceased then armed himself also with a parang. She then asked SD7 to come home, which to us would denote that nothing untoward happened that day. SD7 confirmed the incident with the deceased as related to by SD6.

28. We are of the view that the evidence of SD5, SD6 and SD7 did not have much bearing on the case as a whole. What it merely showed was that the deceased had a quarrel with the appellant on 12 March 1998 and that there was tiff sometime in 1997 between the deceased and SD6 and SD7 which was totally unrelated to the quarrel between the deceased and the appellant in 1998. The offence in question

with which the appellant is charged with was committed on 7 April 2000, i.e., about 2 years later after the said quarrel between the deceased and the appellant.

29. The fourth issue raised by counsel for the defence is related to the third issue discussed above. With regards to this, counsel argued that the learned trial judge misdirected himself and erred in law when he only considered Exceptions 1 and 2 of section 300 of the Code and did not consider Exceptions 3 and 4 of section 300 and also section 299 of the Code.

30. Section 299 of the Code (“Culpable homicide) read as follows -

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

31. Section 300 of the Code (“Murder”) reads -

Except in the cases hereinafter excepted, culpable homicide is murder -

(a) if the act by which the death is caused is done with the intention of causing death;

(b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

Illustration (c) reads -

A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

32. Exceptions 1 and 2 provided for under section 300 of the Code reads -

Exception 1 - 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, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

(a) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(b) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;

(c) that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Exception 2 - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

33. Counsel for the defence argued that the learned trial judge never considered Exceptions 3 and 4 of section 300 of the Code which reads -

Exception 3 - Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of the public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

34. We have carefully perused the evidence before the learned trial judge and all the Exceptions under section 300 of the Code and the argument canvassed by counsel with regards to section 299 of the Code and the Exceptions under section 300 referred to by him and we cannot see how a case of provocation falling within any of the Exceptions could

be made out on behalf of the appellant. The facts of this case has been dealt with in detail by the learned trial judge in his grounds of decision. What is clear from the evidence is that it was the appellant who went to said house on the day of the incident carrying with him a parang. PW3 testified that she heard a knock on the kitchen-door and that it was the deceased who opened the door. She then saw the appellant slashing the deceased at his neck and stomach. The appellant's contention was that he approached the deceased that night in order to seek clarification from the deceased as to why the latter made some sign at him and uttered certain words earlier in the night when they passed each other whilst travelling on the same road. We cannot see how the defence of provocation under any of the Exceptions under section 300 of the Code can have any application to the facts of case. The Exceptions provided for under the Code surely cannot apply here. In *Vijayan v Public Prosecutor* [1975] 1 MLJ 8, Choor Singh J in delivering the judgment of the Court with regards to Exception 1 said (at page 12) -

“In our judgment, under our law, where an accused person charged with murder relies on provocation and claims the benefit of Exception 1 of section 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.

To put it in another way, it must be shown distinctly not only that the act which caused death was done under the influence of some feeling which took away from the accused all control over his actions, but also that that feeling had an adequate cause and here again it is relevant to compare the provocative act with the act of retaliation. If it can reasonably be said that these two acts more or less balance each other in the sense that the proved provocation could have driven a reasonable person to do what the accused did, then he is entitled to the benefit of this Exception. On the other hand, if the act of retaliation is entirely out of proportion to the provocation offered, the plea of grave and sudden provocation fails. It is needless to add that the matter must be considered objectively and that the burden is on the accused to establish provocation on a balance of probabilities. *Jayasena v. Regina* ([1970] 1 All ER 219).”

35. We are of the view that the provocation in the instant appeal, if any, was trivial under the circumstances of the case. The said quarrel between the deceased and the appellant occurred in 1998 whereas the offence with which the appellant was charged with was committed on 7 April 2000, that is, about two years later. There is no evidence of any other quarrel or confrontation between the appellant and the deceased between the two occasions. After passing each other on the road on the day of the incident, there was a lapse of time or a cooling off-period before the appellant went to confront the deceased at the said house. If at all the deceased had made some sign at him and uttered some words which he could not make out, we do not think that the

provocation, if any, was so grave, by the standards of a reasonable man, as to warrant a retaliation by the appellant with a parang. We are also of the view that the provocative act of the deceased, if any, was not capable of constituting provocation sufficient for the court to reduce the charge of murder to culpable homicide not amounting to murder. The bodily injuries inflicted upon the deceased were clearly disproportionate to the act of provocation, if any, caused by the deceased and hence we would agree with the learned deputy public prosecutor that the defence of provocation under any of the Exceptions under section 300 of the Code cannot have any application to the facts of this case.

36. The appellant was charged with murder and hence the prosecution must prove the following ingredients -

(i) that the death of Balakrishnan a/l Karuppusamy, viz., the deceased had taken place;

(ii) that his death had been caused by or in consequence of the act of the appellant; and

(iii) such act was done with the intention either of causing death or of causing bodily injury sufficient in the ordinary course of nature to have caused her death.

37. It is not in dispute that the first ingredient has been proved. With regards to the second and third ingredients the

prosecution has adduced the following evidence :-

(i) at about 9.30pm on the day of the incident, the deceased was having his dinner and subsequently went to wash up; SP3 was also at home at the material time;

(ii) later there was a knock on the kitchen-door to the said house and upon opening it the deceased was attacked by the appellant with a parang;

(iii) there was struggle and in the course of it the deceased was slashed and stabbed in the heart; SP3 saw the appellant slashing the neck of the deceased and when he fell, the appellant sat on his body and continued attacking the deceased with the parang; she went to his aid and was injured in the process;

(iv) the appellant then ran away;

(v) upon being informed at about 11.00pm on the day of the incident that an ambulance was required, SP5 went to the said house and found the deceased lying on the floor in a pool of blood; he examined the body and found that the deceased was dead;

(vi) SP2, the doctor who conducted the post-mortem found several cuts and stab wounds on the deceased's head, neck, arms and chest and opined that the cause of death

was a stab injury to the heart; he was of the view that the injuries “could have been caused by a long sharp weapon which can go through like a parang”.

38. We are of the view the learned trial judge was correct in finding that the prosecution had made out a *prima facie* case against the appellant when the case for the prosecution was concluded. The learned trial judge has considered the defence of grave and sudden provocation under Exception 1 of section 300 of the Code and surmised that such defence could not subsist under the circumstances of the case. After considering all the evidence adduced before him, the learned trial judge held that the prosecution succeeded in proving a case beyond reasonable doubt against the appellant that he murdered the deceased. He was found guilty and duly convicted and sentenced to death under section 302 of the Code.

39. Premised upon the reasons given above, we were satisfied that the defence of provocation under any of the Exceptions under section 300 of the Code was not available to the appellant and accordingly the appellant’s appeal against his conviction was dismissed.

(Mohd Ghazali Mohd Yusoff)
Judge
Court of Appeal, Malaysia

Dated this 2nd day of September 2008.

Counsel

For the appellant: Harbhajan Singh
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For the respondent: Wong Chiang Kiat
Deputy public prosecutor