

DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANG KUASA RAYUAN)

RAYUAN JENAYAH NO: B 05-58-2000

ANTARA

MOHD BAKRI BIN BELAHO  
(W/N: INDONESIA) ... PIHAK PERAYU

DAN

PENDAKWA RAYA ... PIHAK  
MENENTANG

(DALAM MAHKAMAH TINGGI DI SHAH ALAM  
PERBICARAAN JENAYAH NO: 45-1-2000

ANTARA

PENDAKWA RAYA ... PENDAKWA

DAN

MOHD BAKRI BIN BELAHO  
(W/N: INDONESIA) ... ORANG KENA  
TUDUH)

CORAM: Mohd Ghazali Mohd Yusoff, JCA  
Suriyadi Halim Omar, JCA  
Hasan Lah, JCA

## **JUDGMENT OF MOHD GHAZALI MOHD YUSOFF**

1. The appellant was convicted for the murder of one Aminah binti Bahrah (“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. The appeal was dismissed and the conviction affirmed. This was a unanimous decision.

2. The offence was committed on 27 July 1998 sometime between 5.30am and 6.30am at house No. ST 293, Bukit Perwira, Jalan 11, Selayang Baru, Batu Caves, Selangor (“the said house”). There are five rooms in the said house and three of the rooms were rented out separately by the owner, one Jamaliah bt Mohd Yusuff (SP8). The appellant was a tenant in one of the rooms. The deceased and her family, namely, her husband named Samsudin and a child aged about 2 years old, were tenants in another room. One Ahmad bin Jumah and also known as Hassan (SP9) was also a tenant in one of the rooms. SP8 kept one of the rooms for her own use and the remaining room was used as a store.

3. In his evidence SP9 testified that at about 12.30am on 27 July 1998, i.e., the day of the incident, the deceased’s

husband, Samsudin brought a visitor, one Jumain to the said house. Jumain later slept in the lounge of the said house. At about 6.30am on the same day, he heard a scream for help while he was in his room, He then peeped through the door of his room and saw the deceased lying on the floor in the lounge area which was lighted, whilst dressed in a yellow dress. The appellant, who had a green towel wrapped around him but was shirtless, was crouching over her and in his left hand was a kitchen knife whilst his right hand was on her throat. Samsudin and Jumain were nowhere to be seen. Fearing for his life, he did not come out of his room but climbed out through the window in his room and ran away to a nearby hill.

4. At about 7.15am the same day, he came back to the said house and saw the deceased lying on the floor of the kitchen dressed in her underwear, namely, a brassiere and panty. There were blood-stains on the floor of the kitchen and also the lounge area. He did not see the appellant. He then proceeded to SP8's food-stall which was within the vicinity where he was working as a helper. He did not inform SP8 about the incident as he was too scared. He later went back

to the said house at around midnight.

5. In her evidence, SP8 stated that at about 2.00pm on the day of the incident, whilst at her food-stall, she was informed by a neighbour that the deceased's child was crying very loudly. She then went to the said house and saw the deceased lying on the kitchen floor and also saw some blood-stains. She consequently proceeded to the Selayang Police Station and lodged a report.

6. In his evidence, Chief Inspector Mohd Fazley Ab Rahman (SP11), the investigation officer of the case, testified that he was informed about the incident at about 4.00pm the same day. He then went to the scene of the crime and found the lifeless body of the deceased covered by a green towel. He noticed that there were wounds to the deceased's neck. He later found a knife without its handle in the kitchen of the said house. He also found another knife and some soaked clothing in a pail in the bathroom. The deceased was later sent to the Kuala Lumpur Hospital for a post-mortem to be conducted. SP11 testified that from his investigation, he was of the view that no one else was involved in the crime. He

also informed the court that he was not able to serve the subpoena on the deceased's husband, i.e., Samsudin as he could not be traced.

7. Dr Abdul Rahman bin Yusof (SP6) who was attached to the General Hospital Kuala Lumpur and who conducted the post-mortem on the deceased stated in his report that the body of the deceased bore marks of violence which included the following -

(i) a cluster of stab wounds on the right side of the neck just below the pinna and that "these wounds associated with a linear abrasion at the lower part of the wound extending to the nape of the neck 11.0 x 2.0 cms";

(ii) "two stab wounds jointed together at the base upper part of the base of the left side of the neck medial 2.5 x 0.5 cms and lateral 3.5 cms with the depth of the wound 4.0cms directed upwards and inward";

(iii) "a cluster of 9 incised wounds on back of the head extending downwards to the neck; the upper most 10.0 x 1.0

cms (depth 1.0 cms) joint with 2<sup>nd</sup> wounds 4.0 x 1.0 cms. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> wounds jointed together on the average 7.0 x 1.0 cms (1.5 cms depth), the 6<sup>th</sup> wound 3.5 x 0.5 cms (1.0 cm depth), the 7<sup>th</sup> and 8<sup>th</sup> wound were 7.0 x 0.5 cms (1.0 cms depth), the 9<sup>th</sup> wound (lowermost) across the middle part of the nape of the neck 10.0 x 1.0 cms (1.0 cms depth). These wounds were associated with 7 superficial cuts running parallel across the neck each on the average 7.0 x 0.2 cm”;

(iv) “the left jagular [*sic*] vein was completely severed and these associated with partially severed the left common carotid artery”.

8. SP6 testified that “in combination, all these wounds will give rise to severe bleeding and will give rise to fatal haemorrhage causing the death”. He also opined as follows -

“All the stab wounds and slash wounds can cause severe bleeding. Most of the injuries were caused by weapon. Abrasion, bruises and fracture of chin could have been caused by a blunt trauma. I did not find any foreign body in the body. From the nature of the injuries, the weapon consistent with the injuries is a sharp-pointed cutting object e.g. kitchen knife. The

weapon that cause slash wound is heavier, sharp, cutting object e.g. parang.”

“These are the likely weapons consistent with pattern/nature of injuries.”

“My conclusion and my examination reveal this healthy lady had sustained multiple injuries including incise and stab wound which given rise to massive bleeding/haemorrhage. In my opinion the cause of death is directly attributed bleeding as a result of those injuries.”

9. Sergeant Major Hassan bin Zakaria (SP4) testified that the appellant was arrested the next day, i.e., 28 July 1998 in Felda Linggui, Kota Tinggi, Johor and subsequently brought to Kuala Lumpur.

10. In his evidence Dr Chong Sai Ho (SP7), a Medical Officer attached to the Kuala Kubu Baru Hospital stated that he examined the appellant on 30 July 1998. He testified that he found the following injuries on the appellant’s body; he said -

“Injuries on the knees and thigh could be caused by scratches. The laceration wound on the palm were very superficial, edges

clear and straight. In my opinion they were caused by sharp object.

[Refer P4 L(2)] - laceration on palm - this object (broken glass) can cause the injury.

Injuries are unlikely to be self inflicted.

Position of patient and person who cause the scratches on the thigh, I would say face to face. It is possible that the person causing the injuries be lying down and the patient (accused) was squatting/bending on top of the (*sic*) that person”.

“A kitchen knife can give laceration on the palm by a sharp kitchen knife in self-defence.

Scratch marks on both limbs - can be caused by nails/scratching by the opposite party.”

11. 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. The learned trial judge’s transcript of the notes of

proceedings in relation to this read as follows -

“Pendakwa berjaya membuktikan kes prima facie seperti pertuduhan. OKT dipanggil membela diri seperti pertuduhan.”

12. The appellant elected to give evidence on oath. In his evidence-in-chief, he stated that at about 6.00am on the morning of the day of the incident, he heard some voices in the deceased's room and saw that the door to her room was ajar. He peeped into the room and saw the deceased dressed in her underwear and a shirtless male person. The said male person suddenly attacked him with a knife and stabbed him. He managed to grab the knife but the said male person kicked his hand. He took flight but was stabbed in his buttocks and when he turned around was stabbed in his thigh. He then ran to his room. The said male person told him to stay in his room and threatened that he will kill him if he leaves the room. After the said male person was no longer around, he went to his nephew's house in Johor. He was later arrested by the police.

13. Under cross-examination, the appellant denied having quarreled with the deceased in the lounge of the said house

on the morning of the day of the incident. He stated that when he went to the bathroom to take a bath, he was wearing a green towel and did not see anyone in the lounge. He also stated that the deceased's husband, Samsudin and the said Jumain had by then left for work. He denied that he stabbed the deceased.

14. In re-examination, the appellant testified that when he got up in the morning on the day of the incident, the said Jumain had left for work as he was not in the lounge area of the said house. He later said he presumed that the said Jumain had left for work. However, he also said that he heard the said Jumain's voice coming from the direction of the deceased's room. In relation to the laceration wound on his hand, he claimed that that wound was inflicted by a knife used by the said Jumain. He also said he went to SP9's room but the latter was not in. This was how he put it -

“Bila saya bangun pagi Jumain telah pergi kerja sebab dia tak ada di ruang tamu. Dalam bilik Aminah, saya dengar suara Jumain.

Saya anggap dia sudah pergi kerja.

Luka ditangan - saya dapat kerana pisau yang diguna oleh Jumain menikam saya. Saya tangkap pisau itu, dia tarik. Saya pergi ke bilik Hassan. Hassan tak ada. Bilik itu kosong.”

15. 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. In relation to the defence case, he said -

“Keterangan tertuduh sebagai pembelaan adalah jelas satu pembohongan. Ia tidak perlu dianalisis dengan panjang lebar. Ia bukan sahaja tidak menimbulkan apa-apa keraguan terhadap kes pendakwaan, malah menguatkannya.”

16. The appellant appealed.

17. Before this court, counsel for the appellant argued that the learned trial judge failed to undertake a maximum evaluation of the evidence adduced at the close of the case for the prosecution and had applied the wrong standard of proof.

18. In relation to the evidence of SP9, counsel pointed out that the learned trial judge was of the view that SP9's reaction upon witnessing the crime was unusual, namely, he left the said house through the window of his room and ran away to hide and when he returned, after seeing the body of the deceased in the kitchen, he went to work at SP8's stall but did not inform SP8 or anyone else about the incident. In relation to the incident, counsel argued there was no evidence that the place where the incident took place was lighted and hence the learned trial judge erred in accepting SP9's evidence that he saw what transpired at the material time. In the same vein, counsel argued that the learned trial judge was wrong in accepting the evidence of SP9 when SP9 had access to the place of the incident and hence the opportunity to commit the offence himself.

19. Counsel also argued that, in relation to the non-calling of Samsudin, i.e., the deceased's husband and the said Jumain by the prosecution, the learned trial judge erred in not applying the presumption under illustration (g) of section 114 of the Evidence Act 1950, viz., that the court may presume that evidence which could be and is not produced would if

produced be unfavourable to the person who withholds it, against the prosecution.

20. Finally, counsel argued that the learned trial judge never considered the appellant's defence and just came to the conclusion that his defence was based on lies and does not raise any reasonable doubt on the prosecution's case.

21. I cannot find any basis for counsel to argue that the learned trial judge failed to undertake a maximum evaluation of the evidence at the close of the case for the prosecution and had applied the wrong standard of proof.

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

(i) that the death of Aminah binti Barah, viz., the deceased had taken place;

(ii) that her 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.

23. 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) the deceased, the appellant and SP9 were residing in the said house, albeit in different rooms;

(ii) on the morning of the incident, SP9 heard a scream and upon peeping through the door to his room saw the following-

(a) the deceased was lying on the floor in the lounge area of the said house which was lighted, whilst dressed in a yellow dress; and

(b) the appellant, who had a green towel wrapped around him but was shirtless, was crouching over her and in his left hand was a kitchen knife whilst his right hand was on her throat;

(iii) Samsudin, the deceased's husband and his friend, Jumain were nowhere to be seen at that material time;

(iv) fearing for his life, SP9 did not come out of his room but climbed out through the window to his room and ran away to a nearby hill;

(v) when SP9 came back to the said house he saw the deceased lying on the kitchen floor dressed only in her brassiere and panty and saw blood-stains on the kitchen floor;

(vi) SP9 then proceeded to SP8's stall where he worked as a helper and did not inform anybody about the incident;

(vii) later, SP8, upon being informed by a neighbour that the deceased's child was crying very loudly went to the said house and found the deceased lying on the kitchen-floor and saw blood-stains on the floor;

(viii) upon being informed of the incident, the investigation

officer of the case, SP11 went to the said house and found the lifeless body of the deceased covered by a green towel; he noticed that there were wounds to the deceased's neck and in the course of investigation found two knives;

(ix) SP6, the doctor who conducted the post-mortem found several stab wounds on the deceased's neck and also found that her jugular vein was completely severed; he testified that his examination revealed that the deceased sustained multiple injuries including incise and stab wounds which has given rise to massive bleeding/haemorrhage and opined that the cause of death was "directly attributed to bleeding as a result of those injuries"; he was of the view that most of the injuries were caused by a weapon and the weapon consistent with the injuries was a sharp-pointed cutting object, e.g., a kitchen knife;

(x) the appellant was arrested in Johor on the following day;

(xi) SP7, the doctor who examined the appellant after his arrest testified that he found certain injuries on the appellant's body which he opined were caused by a sharp object and

that these injuries were unlikely to be self-inflicted; he also found scratch-marks on both his limbs and opined that they could have been caused by finger-nails.

24. In his grounds of judgment, the learned trial judge after laying down the evidence of the various witnesses in detail and highlighting his perception of the facts before him, found that a *prima facie* case has been made out against the appellant on the offence charged, viz., murder under section 302 of the Code and hence called upon the appellant to enter on his defence; he said (at page 91 of the appeal record) as follows -

“Apa yang penting ialah menimbang daripada keterangan yang ada sama ada di peringkat pendakwaan menutup kesnya terdapat satu kes *prima facie* untuk tertuduh menjawab pertuduhan terhadapnya.

Saya berpuashati bahawa pendakwaan, diakhir kesnya, berjaya membuktikan pada tahap *prima facie* bahawa tertuduh melakukan kecederaan-kecederaan ke atas si mati yang menyebabkan kematiannya dan bahawa ia dilakukan dengan niat membunuh, atau dalam kata-kata lain membuktikan pada tahap *prima facie* semua ingredient kesalahan seperti pertuduhan dan dikehendaki

oleh seksyen 300 Kanun Keseksaan.

Maka saya memanggil tertuduh membela diri seperti pertuduhan.”

25. The appellant elected to give evidence on oath. At the conclusion of the trial, as discussed earlier, the learned trial judge found that the prosecution has proved its case beyond reasonable doubt and found the appellant guilty of the offence of murder as charged and convicted him.

26. After a careful perusal of the appeal record and the learned trial judge’s grounds of judgment I cannot see any merits in this appeal. The learned trial judge has religiously followed what was required of him pursuant to sections 180 and 182A of the Criminal Procedure Code. With regards to these provisions, I would refer to *Balachandran v Public Prosecutor* [2005] 1 CLJ 85. In delivering the judgment of this court, Augustine Paul JCA (as he then was) said (at pages 99-100):

“As the offence in this case was committed in 1998 the burden of proof on the prosecution is governed by ss. 180 and 182A of the

Criminal Procedure Code as amended in 1997 (“s.180” and “s.182A” respectively). They read as follows:

Section 180

(1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prima facie* case against the accused.

(2) If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the Court shall record an order of acquittal.

(3) If the Court finds that a *prima facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.

Section 182A

(1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.

(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record

an order of acquittal.

Section 180(1) makes it clear that the standard of proof on the prosecution at the close of its case is to make out a *prima facie* case while s.182A(1) enunciates that at the conclusion of the trial the court shall consider all the evidence adduced and decide whether the prosecution has proved its case beyond reasonable doubt. The standard of proof on the prosecution at the end of its case and at the end of the whole case has thus been statutorily spelt out in clear terms. The submission made must therefore be ratiocinated against the background of the meaning of the phrase "*prima facie* case" in s. 180. Section 180(2) provides that the court shall record an order of acquittal if a *prima facie* case has not been made out while s.180(3) provides that if a *prima facie* case has been made out the accused shall be called upon to enter his defence. A *prima facie* case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. The phrase "*prima facie* case" is defined in similar terms in *Mozley and Whiteley's Law Dictionary*, 11th edn as:

A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence,

and can be overthrown only by rebutting evidence adduced by the other side.

The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand if a *prima facie* case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier. In order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established. As the trial is without a jury it is only with such a positive evaluation can the court make a determination for the purpose of s.180(2) and (3). Of course in a jury trial where the evaluation is hypothetical the question to be asked would be whether on the evidence as it stands the accused could (and not must) lawfully be convicted. That is so because a determination on facts is a matter for ultimate decision by the jury at the end of the trial. Since the court, in ruling that a *prima facie* case has been made out, must be satisfied that the evidence adduced can be overthrown only by evidence in rebuttal it follows that if it is not rebutted it must prevail. Thus if the accused elects to remain silent he must be convicted. The test at

the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a *prima facie* case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case for the prosecution. If there is any such doubt there can be no *prima facie* case.

As the accused can be convicted on the *prima facie* evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. However it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt. Proof beyond reasonable doubt involves two aspects. While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case. Therefore a case can be said to have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided by s. 182A(1) of the Criminal Procedure Code. That would normally be the position where the accused has given evidence. However, where the accused remains silent there will be no necessity to re-evaluate the evidence in order to determine whether there is a reasonable doubt in the absence of

any further evidence for such a consideration. The *prima facie* evidence which was capable of supporting a conviction beyond reasonable doubt will constitute proof beyond reasonable doubt.”

27. In relation to the non-calling of the deceased’s husband, Samsudin and Jumain as witnesses for the prosecution, the learned trial judge said as follows -

“Ketidak hadiran Samsudin, suami si mati tidaklah mencatat kes pendakwaan atau boleh membangkitkan andaian sebaliknya di bawah seksyen 114(g) Akta Keterangan 1950. Keterangan dikemukakan bahawa dia telah ‘dilarikan’ oleh empat orang lelaki beberapa minggu selepas isterinya dibunuh. Dalam “kehidupan liar” warga Indonesia, baik di negara mereka atau di sini tidaklah menghairankan jika dia juga telah ‘lenyap’.

Saya juga berpendapat bahawa kegagalan memanggil Jumain juga tidak mencatitkan kes pendakwaan. SP11 memberi keterangan bahawa dia tidak siasat Jumain kerana mengikut Samsudin (suami si mati) Jumain telah balik ke Tanjong Malim. Saya akui bahawa beliau sepatutnya berbuat lebih dari itu dan mengatakan sesuatu yang lebih dari itu. Tetapi, soalnya adakah kegagalan mencari Jumain itu (kita mesti ingat dia juga seorang pendatang, ‘tanpa izin’ atau tidak kita tidak tahu) menyebabkan timbulnya keraguan ke atas kes pendakwaan. Ini mesti dilihat

dari keseluruhan keterangan yang ada. Mengikuti pertimbangan saya tidak.”

With regards to this issue, SP11 testified that he had in the course of investigation recorded a statement from Samsudin but subsequently was unable to serve a subpoena on him as he could not be traced. One Inspector Mohd Razali Taib (SP12) also testified that he was unable to trace Samsudin. In relation to Jumain, SP11 said he was informed earlier by Samsudin that Jumain had gone back to Tanjong Malim. He also said he did not carry out an investigation on Jumain.

28. Under the above circumstances, I cannot see the relevance of counsel canvassing that section 114 illustration (g) of the Evidence Act 1950 would apply. Section 114(g) illustration (g) provides “that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it”. The simple reason why the prosecution did not call Samsudin to testify or even offer him as a witness for the defence was that he could not be traced. The police could not serve a subpoena on him to compel his attendance in court.

29. Further, I cannot think of any reason why the prosecution would want to withhold him from coming to court to testify. At the time of the incident SP9 had seen only the appellant with the deceased. The appellant himself said when he got up in the morning, Samsudin had gone to work as he was not in the lounge. In relation to Jumain, SP11 testified that he did not carry out an investigation on the former. This would denote that SP11 has never met Jumain in the course of his investigation and hence never recorded a statement from him. Unless counsel can show there was a deliberate suppression of evidence, I cannot see how section 114 illustration (g) of the Evidence Act 1950 can be raised here.

30. In relation to the evidence of SP9, counsel for the appellant had pointed out that the learned trial judge was of the view that SP9's reaction upon witnessing the crime was "unusual", namely, he left the said house through the window of his room and ran away to hide and when he returned, after seeing the body of the deceased in the kitchen, he went to work at SP8's stall but did not inform SP8 or anyone else about the incident. In relation to the incident, counsel argued there was no evidence that the place where the incident took

place was lighted and hence the learned trial judge erred in accepting SP9's evidence that he saw what transpired at the material time. In the same vein, learned counsel argued that the learned trial judge was wrong in accepting the evidence of SP9 when SP9 had access to the place of the incident and hence the opportunity to commit the offence himself.

31. I find it difficult to comprehend the last part of the submission above. In the court below, the appellant never suggested, as a defence, during the case for the prosecution that SP9 had the opportunity to commit the offence himself neither was such a defence raised specifically or otherwise during the defence case. What is clear from the notes of evidence and minutes of the proceedings is that there was the lack of cross-examination of witnesses by the defence suggesting that SP9 could have been the person who murdered the deceased as he had the opportunity to do so. Further, that SP9 could have been the person who committed the offence was suggested for the first time only at this appeal and not at the trial. In the court below the appellant testified that he heard Jumain's voice coming from the direction of the deceased's room that morning and that the

wound on his hand was inflicted by a knife used by Jumain which, to me, would seem to be that the appellant was suggesting that it was Jumain who had the opportunity to inflict the injuries on the deceased.

32. Counsel also submitted before this court that the learned trial judge never considered the appellant's defence. He argued that the learned trial judge just came to the conclusion that the defence was based on lies and does not raise any reasonable doubt on the prosecution's case. With due respect to counsel, I cannot see any merit or any basis for this argument. In his grounds of judgment, the learned trial judge dealt at length with the evidence of SP9. He expressed his view that SP9's reaction by running away, after he saw what transpired in the lounge area of the said house on the day of the incident, was a bit unusual but reasonable. He was also of the view that SP9 was a not a very intelligent person. Under the circumstances that SP9 was faced with, the learned trial judge opined that his reaction by running away was understandable. He said (page 87 of the appeal record) :

“Melihat wataknya, alasannya bahawa dia adalah bertindak

sedemikian rupa adalah munasaba, bagi orang sepertinya. Juga adalah munasabah jika kita ambil kira keadaan tertuduh semasa dilihatnya sedang memegang pisau itu. Memandangkan banyak dan teruknya luka-luka di badan si mati, seorang perempuan yang semesti tidak mampu melawan, adalah munasabah mengandaikan bahawa tertuduh pada masa itu seperti seorang “amok” yang sudah hilang pertimbangan sama sekali. Dalam keadaan itu, berkemungkinan besar sesiapa sahaja yang cuba menghalangnya akan diterkamnya. Dalam keadaan itu dan melihat watak SP9, tindakannya bolehlah difahami.”

33. The question that the learned trial judge had to answer at the conclusion of the trial was whether on the totality of the evidence, adding them together and considering them altogether, lead to the irresistible conclusion that it was the appellant who committed the crime. The evidence clearly showed that it was the appellant who committed the crime and that the learned trial judge was correct in arriving at the decision that he did when he called on the appellant to enter on his defence. On the face of the record at the close of the case for the prosecution, it is clear that a case under section 302 of the Code has been made out against the appellant. The evidence links the appellant with the act of killing and

establishes the offence charged.

34. At the conclusion of the trial, the evidence in its totality confirmed in material particulars that it was the appellant who murdered the deceased. No miscarriage of justice has occurred in this case and hence the appeal was dismissed. The conviction and sentence were affirmed.

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

Dated this 8 day of October 2007.

Counsel

For the appellant: Mohamed Haniff Khatri Abdullah  
Tetuan Haniff Khatri

For the respondent: Mangajarkarasi a/p Krishnan  
Deputy public prosecutor