

**IN THE FEDERAL COURT OF MALAYSIA**  
**CRIMINAL APPEAL NO. 05-126-2008 (N)**

**BETWEEN**

**PUBLIC PROSECUTOR ... APPELLANT**

**AND**

**MOHD NOR RIZA BIN MAT TAHAR ... RESPONDENT**

(In the Court of Appeal  
Criminal Appeal No: N-05-14-2007)

Between

Mohd Nor Riza Bin Mat Tahar

And

Public Prosecutor)

Corum: Nik Hashim Bin Nik Ab. Rahman, FCJ  
Augustine Paul, FCJ  
Hashim Bin Dato' Haji Yusoff, FCJ

**GROUND OF JUDGMENT**

1. This is an appeal by the prosecution against the decision of the Court of Appeal which had set aside the conviction and sentence of the Accused/Respondent under section 302 Penal

Code and substituted it with a conviction under section 304 Penal Code and a sentence of 10 years imprisonment. We allowed the appeal and now give our reasons.

2. The facts of the case can be adequately found in the Grounds of Judgment of the Court of Appeal as reported in [2009] 3 CLJ 350.

### **The Appeal**

3. Before us, the learned DPP argued that the evidence of the main prosecution witness, Johaniza Bin Atin (SP4) need not necessarily be corroborated although there was an allegation of instigation against him by the defence. Under cross-examination, SP4 totally denied this allegation (see Appeal Record page 31). The gist of SP4's evidence is that the Respondent specifically told him of his intention to kill the deceased, Mohd Isnizar Bin Yup. The Respondent had further expressed the same intention to SP4, when he had a Rambo knife (P5) in his hand and went out of the prison's bachelor's barrack to confront the deceased who had just arrived on his motorcycle. When SP4 followed and caught up with the Appellant, he saw the Respondent still holding the knife and that the deceased's shirt was full with blood. When SP4 took away the knife from the Respondent, he heard the deceased asking "why did you stab me kuching". "Kuching" is the nickname given to the Respondent.

4. On this point, learned counsel for the defence submitted that the Respondent had no intention to kill the deceased but merely to confront him at the suggestion of SP4 so that the deceased would stop defaming him. Also the defence of intoxication was raised by Respondent by saying that just before the incident he had consumed a can of beer and was intoxicated at the time of the incident.
5. The learned trial Judge however found on the evidence tendered that the intention to kill by the Respondent existed from the beginning when the Respondent declared to SP4 a few times that he was not satisfied and that he wanted to kill “tinju” (the deceased’s nickname). Even after SP4 had removed the knife (P5) from Respondent’s hand, the Respondent while standing near the deceased’s head still said “oh, you are still not dead?”.
6. However on appeal, the Court of Appeal held that the learned trial Judge had misdirected himself in the judicial appreciation and proper evaluation of the defence case by stating that the defence had failed to raise any reasonable doubt without assigning any valid reasons (see Appeal Record Vol. I page 13 at paragraph 25). This led to the Court of Appeal setting aside the conviction and sentence of the High Court and substituting it with a conviction for the offence of culpable homicide not amounting to murder, punishable under section 304 (b) of the Penal Code and imposing a sentence of 10 years imprisonment from the date of his arrest.

7. Having heard the respective arguments, and perused the Appeal Record, with respect, we disagreed with the reasoning given by the Court of Appeal.

### **Conclusion**

8. We found that SP4's evidence was in fact corroborated by the evidence of another prison warden, Rahim Bin Yahadi (SP5) who happened to be in the common rest room of the bachelors prison barrack at the material time. Upon hearing the commotion, SP5 went out of the rest room and saw SP4 holding the Respondent from behind. He also saw the Respondent holding a knife in his hand. SP5 then immediately ran to get help from Sgt. Yunus (SP7) who was at a stall just outside the Seremban prison fencing. Both of them then went to the scene whereupon SP7 saw Sgt. Zulkifli (SP6) holding the Respondent who was struggling. When SP7 took custody of the Respondent from SP6, the Respondent was still struggling and shouting that he was satisfied because he had stabbed the deceased several times. We found no reason to doubt the evidence of SP4, SP6 and SP7
  
9. Based on the above evidence we find that the Respondent's intention to kill was manifestly portrayed by his own words to that effect, coupled with the inference from his conduct in running out with a knife in his hand to confront the deceased who had just arrived at the scene. The fact that SP4 saw the Respondent with the knife still in his hand and the bloodied shirt of the deceased and that there was nobody else at the

scene at the material time could only lead to one reasonable inference i.e. that the Respondent had stabbed the deceased. This fact was further corroborated by the deceased who uttered the words “why did you stab me kuching?”.

10. The evidence of the Forensic Consultant, Dr. Sharifah Safoorah (SP3) also corroborated SP4’s evidence when she concluded that the deceased was killed as a result of a stab wound on his chest. (See Appeal Record Vol. 2 page 018 paragraph C) and that the wound could possibly be caused by a sharp weapon like a knife. According to SP3 the chances of survival from such a wound was very slim.
11. On the defence of intoxication, section 85 of the Penal Code clearly spells out when intoxication could be a defence “*if the person charged at the time of the act ... complained of did not know that such act ... was wrong or did not know what he was doing and*
  - (a) *the state of intoxication was caused without his consent by the malicious or negligent act of another person; or*
  - (b) *the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act ...*”
12. But it is clear from the evidence adduced that it was the Respondent who voluntarily consumed a can of beer just before the incident. Self-induced intoxication is not a defence

under section 85 (a) of the Penal Code. Moreover in this instant appeal, there was no scientific evidence to support any intoxication of the Respondent, having considered his conduct before and after the commission of the crime. It was obvious that the Respondent knew what he was doing. (See: **Francis Antonysamy v PP [2005] 2 CLJ 481**).

13. Apart from his defence of intoxication and allegation of instigation against SP4, the Respondent also denied any intention to kill the deceased. He testified that he merely confronted the Respondent only to get an answer from him as to why he had been bad mouthing the Respondent by alleging that he had sodomised the Respondent as told to him by SP4. As we had said earlier, SP4 denied this allegation against him by the Respondent. At the risk of repetition, the fact that the Respondent took out his own Rambo knife when he went to confront the deceased, coupled with his utterance of wanting to kill the deceased as he was not satisfied with what the deceased allegedly did in defaming him, negated the defence of not intending to kill the deceased. We therefore rejected the defence version.
14. Although learned counsel for the Respondent argued that nowhere did the trial Judge give his reasons for disbelieving the defence, he however conceded that we could also reevaluate the evidence as a whole, which we did.
15. We found the evidence available in this appeal was overwhelming to support a conviction under section 302 of the

Penal Code. With respect we felt the Court of Appeal had erred in interfering with the finding of the trial Judge.

16. For the above reasons, we therefore allowed this appeal. The order of the Court of Appeal is set aside and the conviction and sentence given by the trial Judge under section 302 Penal Code are restored.

Dated: 26<sup>th</sup> May 2009

Signed.  
**(DATO' HASHIM BIN DATO' HJ. YUSOFF)**  
Judge  
Federal Court Of Malaysia  
Putrajaya

Parties:

For the Appellant:           Awang Armadajaya Bin Awang Mahmud  
Deputy Public Prosecutor  
Jabatan Peguam Negara

For the Respondent:       Hisyam Teh Poh Teik  
Messrs Teh Poh Teik & Co.