WHAT A JUDGE HAS TO DO...

Bahan asal dari Arkib Negara Malaysia

Mt Justice Hashim Ycap Sani leoving the court building a/tor delivering his judgment yesterday

THE TAHA MURDER TRIAL

- FULL TEXT OF THE JUDGMENT

THE JUDGE'S CONCLUSIONS

After considering all the evidence adduced by the prosecution and the defence my conclusions are as follows:-

(1) It is my finding that the evidence or alibi of both the accused is completely false and fabricated.

(2) The voluntariness or the cautioned Statement of Rahmat Satiman is affirmed;

(3) The truth or the cautioned statement or Rahmat Satimun is affirmed in so far as it relates to both the accused;

(4) The veracity of the evidence of Mr Gee stands unchallenged and that means slugs A and A1 either of which singly could have caused the death of the late Datuk Taha came from the Walther automatic pistol belonging to Datuk Mokhtar.

(5) Datuk Mokhtar was in custody and In control or P88 at all material times:

(6) The defencc evidence as a whole has not succeeded in creating any doubt on the truth or the prosecution story;

(7) It is an inescapable conclusion that the charge has been proved beyond reasonable doubt against both the accused. Any other rinding would be contrary' to the weight of evidence.

I accordingly enter a verdict of guilty against both accused.

THE charge reads us follows: That you on 14/4/82 at or about 1.30a.m. at Kampong Sri Asahan, Gemencheh, in the District of Tampin, in the State of Negeri Sembilan. in furtherance of the common intention of you all, did commit murder by causing the death of one Datuk Mohd Ta'ha bin Talib, and that you have thereby committed an offence punishable undersection 302 of the Penal Code read with section 34 of the said Code.

The prosecution had earlier in the proceeding sought to admit the cautioned statement of Rahmat Satiman.

Based on ***Jo***hnson *Tan* ***Han*** Seng v. *Public Prosecutor*, the defence challenged the voluntariness of the statement.

The question of voluntariness of the statement (P101) was dealt with in my written ruling dated 8th November 1982

The ruling was that P101 was voluntary and admissible but did not deal with the question of its truth.

Because at the close of the prosecution case the defence submissions raised important issues of facts and law. I felt that basing on ***Public Prosecu****tor v. S****ihubduin & Anor*** a full review of the prosecution's evidence adduced was necessary and this review is contained in a written decision dated 31st December 1982.

The central issues I dealt with in the written decision included the law of section 34 of the Penal Code and section 30 of the Evidence Act.

Based on what I considered the proper principle to adopt following a long line of authorities I acquittcd Nordin Johan and Aziz Abdullah without calling for their defence.

In simple language the principle is this. A man can be convicted on his own confession But a man cannot be convicted on the confession of another unless there is sufficient evidence. independent of the confession, to warrant his conviction.

Defence was however called in respect of Datuk Mokhtar and Rahmat Satiman.

Regulation 17 of the Essential (Security Cases) Regulation. 1975 as amended by P.U. (A)362/ 75 reads as follows:—

"The court shall decide on the guilt or innocence of the accused only at the conclusion of the case for the defence, and it shall so decide upon hearing and considering the evidence as a whole, having regard to the justice of the cases, without regard for the technicalities of the rules of evidence of procedure, or for any defect concerning the charge "

There ore therefore three principal duties imposed on the trial judge before making his decision at the conclusion of the trial

They are:—

(1) He shall decide upon hearing and considering the evidence of both the prosecution and the defence us a whole;

(2) He shall have regard to the justice of the case; and

(3) He shall in arriving at his decision disregard technicalities of the rules of evidence or procedure

The sting of this regulation is of course carried in the third limb of the regulation and it is in fact the object of attack by the purists amongst the lawyers.

But fortunately the problem does not arise in this case because both the prosecution and the dcfcnce adhered as far as possible to the normal rules of evidence.

In my opinion the first and the second limb of Regulation 17 carry the normal functions of a court, that is to say to have regard to the totality of the evidence and the justice of the case.

These provisions do not, however, in any way lessen the burden of the prosecution to prove their case beyond reasonable doubt and that this burden never shifts.

Therefore the test to apply at the end of the defence is still the normal test, that is whether the defencc has cast a doubt on the truth of the prosecution story.

To warrant an acquittal however the doubt created must not merely be a fleeting doubt or a capricious doubt but a doubt in respect of which a substantial reason can be given.

The question to ask now is — has the defence evidencecreateda reasonable doubt on the truth of the prosecution story?

As the defence of Rahmat Satiman is less complicatedIproposedto deal with his defence first.

The defence for Datuk Mokhtar is much more intricate than that of Rahmat Satiman...

There are a number of dcfcnce witnesses whom I have not dealt with in detail in this judgment.

Some of them may appear unshaken hut as stated by the Federal Court in ***Muniandy*** & Ors. v ***Pub***lic ***Prosecutor*** the fact that the witnesses were unshaken in cross-examination is not per se an all-sufficient acid test of credibility.

The inherent probability or improbability of the fact in issue must be the prime consideration.

To summarise, the misconception of the defence lies in my view in failing to look at the prosecution case in its proper perspective.

The prosecution case docs not depend solely or singly on the evidence of Atun bin Ali (PW 18) or the evidence of Sudin bin Shariff (PW 22) or Datin Noisiah (PW 23) or the evidenc of MrGee(PW9) or the evidence of the pathologist (PW3) but the sum total of their evidence together with the evidence of the other prosecution witnesses.

After considering all the evidence adduced by the prosecution and the defence my conclusions are as follows:•

(1) It is my finding that the evidence ol alibi of both the accused is completely false and fabricated;

(2) The voluntariness of the cautioned statement of Rahmat Satiman (P101) is affirmed;

(3) The truth of the cautioned statement of Rahmat Satiman (P101) is affirmed in so far as it relates to both the accused.

(4) The veracity of the evidence of Mr Gee stands unchallenged and that means slugs A and A1 either of which singly could have caused the death of the late Datuk Taha came from the Walther automatic pistol (P88) belonging to Datuk Mokhtar;

(5) Datuk Mokhtar was in custody and in control of P88 at all material times:

(6) The defence evidence as a whole has not succeeded in creating any doubt on the truth of the prosecution story:

(7) It is an inescapable conclusion that the chargehas been proved beyond reasonable doubt against both the accused Any other finding would be contraty to the weight of evidence.

I accordingly entera verdict of guilty against bothaccused.