



**Public Prosecutor**

**AND**

**Novi Yusup Afendi**

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**(High Court of Brunei Darussalam)  
(Criminal Trial No. 12 of 2011)**

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**Steven Chong, J. and Hairol Arni Majid, J.  
31 March 2014**

Criminal law – Culpable homicide not amounting to murder - Appropriate sentence – s.304(1) of the Penal Code.

DPP Suhana Bte Sudin for the Public Prosecutor.  
Mr. Ridzlan bin Hj Ibrahim (M/S Ridzlan Lim) for the Defendant.

**Cases cited:-**

*Public Prosecutor v Kapsoh Bte Holiman* [1998]1 JCBD 49.  
*R v Stabler* [1984] 6 Cr App R(S)129.

**Steven Chong, J.**

The defendant was charged as follows:

***“Charge***

*That you, on the 6<sup>th</sup> July 2011, between 1600hrs to 1800 hrs, at Giordano Staff House at Tian Chung Building, Kiulap Complex, in Brunei Darussalam, did commit murder by causing the death of **Dedah Karmilah Binti Nurazis** (Female 32 years), and you have thereby committed an offence punishable under section 302 Penal Code, Cap 22.*



### **Alternative Charge**

*That you, on the 6<sup>th</sup> July 2011, between 1600hrs to 1800hrs, at Giordano Staff House at Tian Chung Building, Kiulap Complex, in Brunei Darussalam, committed culpable homicide not amounting to murder by intentionally causing the death of one of **Dedah Karmilah Binti Nurazis** (Female 32 years) and you have thereby committed an offence punishable under section 304(1) of the Penal Code.”*

At the close of the case for the prosecution after 16 witnesses had given evidence and upon the court ruling a prima facie case to answer on the charge of murder the defendant pleaded guilty to the Alternative Charge of culpable homicide not amounting to murder under the first limb of section 304(1) of the Penal Code.

### **The facts**

The defendant admitted unreservedly to the following Statement of Facts:

- “1. The defendant is an Indonesian National. He was born on the 27<sup>th</sup> November 1983. He is now 30 years old. At the date of the offence, the defendant was 27 years and 9 months old. The defendant is married to Indra Kusumawati also an Indonesian. They both came to Brunei in 2011 to work. Indra worked at Gex Sdn Berhad (Giordano) and the defendant worked as an assistant chef at Big Papa’s Restaurant in Kiulap.*
- 2. The deceased’s name was Dedah Karmilah Binti Nuraziz and was born on the 1<sup>st</sup> February 1979. She was 32 years old at the time of her death. The deceased also worked at Gex Sdn Berhad (Giordano) as a sales promoter. She has been working for the said company for 12 years. The deceased wanted to return home at the end of July 2011 to get married as her mother had found a suitor from Jakarta.*
- 3. She lived at the Indonesia Worker’s Giordano Staffhouse on the 1<sup>st</sup> floor of the Thian and Chuan Building in Kiulap with her sister, Lelah Karmilah, the defendant’s wife Indra and 3 other colleagues.*



4. *The deceased and her sister have Wednesdays as off days. On Tuesday, the 5<sup>th</sup> July 2011 in the evening, Lelah went to Bunut to sleepover at her aunt's house. The deceased stayed at the staffhouse.*
5. *On Wednesday, the 6<sup>th</sup> July 2011, all of the other workers had left for work in the morning, the deceased was the only person in the staffhouse as it was her day off. Lelah called the deceased at about 12 noon or 1pm and when they spoke, Lelah said the deceased's voice was coarse as she had a sore throat. Lelah told the deceased that she will return home later at 7pm and that their friend Amal wanted to take them to the movie and will pick them up at the staffhouse at 8pm.*
6. *On that same day, the defendant was not working as he was unwell. He woke up at about 2pm and wanted to go to Lee Clinic. He was sent by the company driver to the Clinic but the Clinic was closed. The defendant then walked from Lee Clinic passing through Hua Ho Kiulap and bought a drink. He then walked across to the Guan and Chuan Building and saw Rose Ann at about 3pm.*
7. *The defendant had met Rose Ann on the ground floor as she came down from the stairs from her Filipino Giordano staffhouse on the 2<sup>nd</sup> floor of the said building. The defendant was asking whether his wife had a boyfriend or not and Rose said she does not know. Nellie Jane, another employee of Giordano saw them talking and that the defendant was holding a black sling bag. Nellie Jane at that time was working at the Giordano Store, below the hostel. She was putting up a banner outside the shop.*
8. *The defendant then went to Hua Ho again to buy another drink namely Red Bull and an energy drink as he was very tired. As he was unsatisfied with Rose Ann's answers, the defendant then went upstairs to the first floor of the Indonesian staffhouse. The defendant knocked the door and was opened by the deceased. Before the defendant entered, the deceased said she wants to change her clothes and he waited outside. After she changed her clothes, the defendant was invited inside and invited to sit down in the living room. The defendant asked questions about his wife*



*and was talking about work. In the middle of the conversations, the deceased then excused herself to go to the kitchen to get water to take her medication as the deceased had a cough.*

- 9. The defendant was left alone in the living room and saw the deceased's Nokia E71 mobile phone. He took the mobile phone and was playing with it. When the deceased returned from the kitchen, the deceased stared at the defendant and was angry and uttered harsh words. The defendant got insulted by the harsh words. The deceased slapped the defendant and the defendant reacted by punching the deceased on the face. The deceased shouted loudly "Thief, thief". The defendant became angrier and was offended, afraid that people who heard it might think he was a real thief.*
- 10. The defendant then threw away the mobile phone on the sofa in front of the TV and he chased the deceased and a struggle ensued. The defendant held the deceased's mouth and upper jaw and neck area to prevent her from shouting. The deceased bit the defendant's little finger that was covering her mouth. This made the defendant more angry.*
- 11. While they were scuffling, the defendant saw an iron top of a box, and took the iron by the cord and tried to strangle the deceased's neck area. The deceased resisted and fought off. The deceased then managed to get away and ran inside a room. The defendant could run faster than the deceased and got to the door quickly before the deceased could closed the door. The defendant pushed the door opened and caused the deceased to be pushed away and she fell to the floor.*
- 12. At that time, the defendant was still holding the iron and the defendant tried to strangle her again, the deceased was resisting by placing her hands over her neck and face. The deceased was still shouting "Help, thief, thief" three times.*
- 13. The defendant tried again and this time managed to put the iron cord around her neck and pull the cord around her neck until the deceased stopped shouting.*

14. *The defendant then carried the deceased and put her on the bed and covered her with a blanket. The defendant left the room and brought the said iron with him. He passed by the living room and saw the mobile phone on the sofa and three ATM cards on a table. He took the mobile phone and the cards and left the staffhouse using the back door.*
15. *At about 520pm on the way back to the Big Papa's hostel, the defendant threw away the iron inside a green bin near the Chop Kim San building. He went back to his hostel to wash his clothes and bathed. At about 6pm, the defendant went to the Lee Clinic and got his medication. He consumed his medicine at about 7pm but could not sleep as there police siren in the nearby vicinity.*
16. *In the evening, at about 730pm, Lelah had returned from Bunut and had gone to the Giordano store on the ground floor of the building. 5 minutes later she proceeded up the stairs to their staffhouse on the first floor.*
17. *Before Lelah opened the door, she heard the sound of the living room TV, she knocked on the door as she thought her sister was inside but there was no answer. She then took out her house keys to open the door. When Lelah entered, the lights were switched off but the TV was switched on, Lelah then switched on the light in the living room. Lelah then saw the big box outside the deceased's room which she wants to send to Indonesia was opened. She called "Sister, sister I am home" but there was no reply. Lelah then opened her sister's bedroom door which was unlocked and found that the lights were switched on. Lelah saw her sister was on the bed but covered by a blanket from foot till head.*
18. *Lelah called out "Are you sleeping sister?" but she did not reply. Lelah approached the bed and removed the blanket covering her head. Lelah saw her sister's face was green, the veins visible, the eyes closed, the mouth slightly opened. Lelah was shocked and left the room screaming for help. Lelah went out of the staffhouse and went next door to a salon which was still opened and asked for help.*



19. *Chua Kok Wee was in his salon when Lelah entered hysterically shouting, pointing and about to faint. Chua and two salon workers Lolife and Suyanti then proceeded to enter the said staffhouse. They entered the staffhouse and saw the deceased lying on a bed. Lolife and Suyanti touched the body to check if the deceased was breathing or not. Chua Kok Wee then asked one of his workers to call the Police.*
20. *L/Cpl 4436 Md Ariduanie received a call at 742hrs from the Emergency Room Police 993 and informed Insp Suraya. Insp Suraya arrived at the scene at 8pm and noted the deceased had bruises on the body and marks on the neck. She then informed the Special Investigation Unit, the Crime Scene Unit, the Pathologist and the Coroner.*
21. *At about 8pm, the defendant heard from his friends that someone had died at the Giordano staffhouse. He went to see his boss and asked to resign stating illness as an excuse but his boss refused his request.*
22. *The Investigating Officer, S/Insp Haji Hasnul received a call from Supt Hj Khairur Rijal about a possible murder case at about 830pm he proceeded immediately and arrived at the scene at about 845pm.*
23. *The crime scene  
Based upon the findings at the scene, the IO believed that a scuffle happened in the living room and in the deceased's room where the body was found. There were lots of hairs on the floor, some items were displaced and the floor was wet. One of the deceased's slippers was under her body and one was outside her room. The deceased had marks on her neck showing signs of strangulation by ligature.*

*The Pathologist Dr Senarath and Dr Telesinghe was also present at the crime scene. They found signs of struggles in the living room area. In the search of the possible murder weapon, Dr Telesinghe suggested to the Police to look for a thick cord of about 5 mm-half a centimeter thickness. Several corded objects*



*were collected as exhibits from the scene, for example wires, telephone charges, strings, iron and hairdryer.*

*At the scene, the Pathologists was of the opinion that the initial attack took place in the sitting room because of the displaced boxes and towels and the wet patches of urine. In strangulation cases, victims often passed urine by reflex.*

- 24. At about 11pm, the defendant's wife called to say she intended to sleep over as her staffhouse is being cordoned by the police.*
- 25. The next day 7<sup>th</sup> July 2011, the defendant felt very afraid and still wanted to go back home. He needed money and thought about the deceased's ATM cards which he had taken the previous night. The defendant checked the deceased's mobile phone and found the PIN number stored in the phone. At about 2145pm, the defendant went to the Baiduri Bank ATM at Kiulap and withdrew \$100 and then went back to his hostel.*
- 26. The next day on the 8<sup>th</sup> July 2011, at about 8am, the defendant went to the ATM again and withdrew \$30 from the deceased's account. He went to Hua Ho to buy some things and went back to the hostel.*
- 27. On the same day, at about 10am, the police received information from Baiduri Bank that the deceased's money had been withdrawn using the ATM. From the security camera footage, a man was seen withdrawing some money. The police recognized this man from Indra's facebook when all of the deceased's colleagues were earlier investigated. The police then asked Indra who the man was and she admitted that was her husband, the defendant who works at Big Papa's Restaurant. On the same day at about 240pm, the defendant was arrested. He was brought to the Ong Sum Ping CID office for questioning and was later taken out again to the Kiulap area at about 425pm.*
- 28. During the investigations, the defendant admitted to withdrawing the money using the deceased's ATM card and that he had taken the deceased's mobile phone. The defendant told the Police that he threw away the cards in the drain and the*



mobile phone to the river. They searched the drains near Baiduri Bank Kiulap but no cards were retrieved from the drain but only receipts. In the police van, the defendant told L.Cpl 4705 Elni that he wanted to admit and tell the story on 'What he did to Mila'. 'I strangled Mila using a rope and I threw it in a big green rubbish bin'.

29. PC Zalihan heard and recorded this fact in his investigation diary where it was signed by the defendant.

30. The defendant showing the Iron E31

The defendant together with the police went down from the van and from the Baiduri Bank Kiulap they walked to the nearby Chop Kim San Building where he showed to a big green bin. S.Insp Haji Hasnul looked into the green bin and could not find any strings but saw an iron with the cord wrapped around the iron. This iron was collected as exhibit.

31. The defendant then wrote his own admission in the van. The defendant also made some admissions in Cpl Elni's diary P28.

32. The victim's ATM cards and mobile phone

On the 9<sup>th</sup> July 2011 at about 1205hrs, the defendant's bag was retrieved from the Big Papa's Restaurant kitchen. Inside this bag, it contained the victim's mobile phone Nokia E71, one ATM Baiduri Finance Bank Card, one Visa Electron Baiduri Card and one HSBC ATM Card all three cards bearing the name DEDAH KARMILAH.

33. Exhibits sent to Singapore

Exhibits including the iron, the defendant's bag, cushion and pillow cases were sent to Singapore for analysis. Also sent were nail clippings, strands of hair, blood samples of the victim, the defendant and the victim's colleagues. Two different tests were conducted. One was on fibre transfer analysis and one on DNA analysis.

Fiber transfer analysis

The sofa covers, clothings worn by the defendant and the deceased were analysed for fibre transfers.



*Upon analysis, it was found that there was a one way transfer of fibres from the defendant's clothes to the sofa in the victim's living room. There was also a two way transfer between the deceased's and the defendant's clothings.*

*DNA analysis*

*The deceased's DNA was found on the defendant's bag.*

*The defendant's DNA was found on the pillow where the victim was discovered on the bed and the victim's head was on the said pillow.*

34. *The cause of death*

*The pathologist examined the body at the scene at about 1115pm. Rectal temperature was recorded and the presence of rigor mortis was observed. The time of death was between 3 to 9hrs before the examination. The post mortem was done by Dr Senarath the following morning.*

*Dr Teleshinge findings was that the deceases had fought off the assailant with all her might as there were injuries on her face, elbow, forearms. Dr Senarath found fingertips and finger marks on the left and right jaw and on the upper and middle of the neck.*

*Several attempts to strangle*

*Dr Senarath was of the view that there several attempts to strangle as was seen from the ligature marks injuries Injury no. 2 on the left forehead, no. 6 right cheek, no. 38 right forearm. Injuries no. 3, 32, 33 and 34 were other separate ligature marks.*

*It was his opinion that while trying to apply ligature on the neck, the victim had resisted and as a result the ligature had caused friction or rubbing against the forehead and left cheek. The assailant could not encircled the whole neck with the cord as there were no full cord marks on the neck. The injury on her forearm indicates that she kept her right forearm against the left side of the neck. The separate injuries showed several attempts to strangle the victim's neck as the injuries were at other places like the forehead and left cheeks.*



*The confirmed cause of death*

*There were in total 65 injuries on the deceased's body. The cause of death was Asphyxia due to strangulation. The hands and ligature have been used to constrict the neck of the deceased" – Post Mortem Report attached.*

35. *The defendant gave several statements to the police. His statements as to how he attacked the deceased were consistent with the findings of the pathologist, the post mortem report and the analysis reports. The defendant had by his actions of strangling the deceased neck with his hands and by using the iron cord, had caused the death of the deceased and with intention to cause such death.*
36. *The defendant has no previous convictions."*

The penalty on a conviction for culpable homicide not amounting to murder under section 304(1) of the Penal Code is imprisonment for a term which may extend to imprisonment for life.

Both the Deputy Public Prosecutor and counsel for the defendant agree that his means it is within the discretion of the court to impose any term of imprisonment up to life imprisonment. Reference was made by the Deputy Public Prosecutor to *Public Prosecutor v Kapsah Bte Holiman* [1998]1 JCBd 49, where a sentence of 5 years' imprisonment was imposed for such an offence.

Of course each case must be decided on its own facts. This offence reveals that the defendant is a man who is intemperate, violent and dangerous. Even accepting there was a degree of provocation by the deceased because she used "harsh words" and slapped the defendant and accused him of being a thief after he took her mobile phone and was "playing" with it, his reaction was wholly disproportionate.

We are conscious that the defendant was a young man of 27 at the time of the offence. We accept that he did not go to the deceased's quarters intending to kill her and therefore the offence was not premeditated. We accept that he may have been under "a lot of pressure" after an argument with his wife that day. And we accept the defendant appears to have a clear record.



However we cannot ignore the fact that the life of a young woman has been brutally cut short. The deceased was only 32 and she was about to be married. The defendant being a man clearly had an advantage over the deceased and he used that advantage to strangle her not once but twice to kill her.

In the circumstances we do not think the defendant deserves any compassion or leniency. Having regard to the nature of the offence and the public interest in the protection of human life we see no ground for giving any discount to the defendant for his guilty plea entered at a very late stage in the trial: see *R v Stabler* [1984] 6 Cr App R(S)129.

For the foregoing reasons we consider a sentence of life imprisonment appropriate and that is the sentence which we impose.

**DATO PADUKA STEVEN CHONG**  
Judge, High Court

**DATO PADUKA HAIROL ARNI MAJID**  
Judge, High Court