

En. Malik

DALAM MAHKAMAH MAJISTRET DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
PERMOHONAN JENAYAH INKUES NO: 88-10-2009

INKUES TERHADAP KEMATIAN TEOH BENG HOCK

VERDICT

INTRODUCTION:

A sudden death report was referred to me and under section 329 of the Criminal Procedure Code, the Public Prosecutor requested me to sit as a coroner to conduct an inquest under section 337 of the same code .

Commencement date of inquest:

Representatives of interested party/watching brief:

Deputy Public Prosecutor(s): Mr Tan Hock Chuan

Mr Abazafree

Mr Justin Wee

For family of deceased : Mr Karpal Singh

Mr Gobind Singh Deo

For Selangor State : Mr Malik Imtiaz

For Malaysian Anti Corruption Commission : Dato'Abdul Razak bin Musa

For BAR Council : Mr Rajpal Singh

For YB Ean Yong : Mr Saleem Bashir

Inquest commenced on 5.8.2009 until 4.11.2010 with witnesses totaling at 37 .

Siti Zabedah bt Yahaya (SI-1)

Mohd Ridzuan b Samsuri (SI-2)

Mohd Khairul Izwan b Mohd Nasir (SI-3)

Abd. Kareem b Othman (SI-4)

W. Rosli b W. Adam (SI-5)

Abd. Rahman b Rahim (SI-6)

Zaraiha bt Awang (SI-7)

Saiful Fazamil b Mohd Ali (SI-8)

Dr. Seah Lay Hong (SI-9)

Dr. Khairul Azman b Ibrahim (SI-10)

Mohd Zulaimi b Md Zuber (SI-11)

Mohd Zaidi b Abu Hassan (SI-12)

- Mazli b Jusoh@Che Kob (SI-13)
- Sharul Othman b Mansor (SI-14)
- Dr. Prashant Naresh Samberkar (SI-15)
- Mohd Anuar bin Ismail (SI-16)
- Mohamad Azhar b Abang Mentari (SI-17)
- Mohd Najeib b Ahmad Walat (SI-18)
- Mohd Ashraf b Mohd Yunus (SI-19)
- Sivanesan a/l Tanggavelu (SI-20)
- Mohd Nazri b Ibrahim (SI-21)
- Bulkini b Paharuddin (SI-22)
- Raymond Nion anak John Timban (SI-23)
- Teoh Meng Kee (SI-24)
- Woo Chuan Sing (SI-25)
- Dr. Saravanan a/l Kanniappan (SI-26)
- Hishamuddin b Hashim (SI-27)
- Hairul Ilham b Hamzah (SI-28)
- Arman b Alies (SI-29)
- Dr. Khunying Porntip Rojanusunan (SI-30)

Dr. Shahidan b Md Noor (SI-31)

Dr. Peter Venezis (SI-32)

Manoharan a/l Malayalam (SI-33)

Tan Boon Wah (SI-34)

ASP Ahmad Nazri b Zainal (SI-35)

Ting Chin Kin (SI-36)

Wong Kong Ying (SI-37)

There were 12 expert witnesses in various scientific fields, whom were called to assist this inquest:

1. Zaraiha Binti Awang (SI-7) - toxicologist
2. Saiful Fazami Bin Mohd Ali (SI-8) - chemist in the Criminalistic Department
3. Dr. Seah Lay Hong (SI-9) - DNA scientist
4. Dr. Khairul Azman Bin Hj Ibrahim (SI-10)- forensic pathologist
5. Insp Zaidi Bin Abu Hassan (SI-12) - forensic analyst
6. C.Insp Mazli bin Jusoh (SI-13) - fingerprint specialist
7. Dr. Prashant Naresh Samberkar (SI-15) - forensic pathologist
8. Dr. Saravanan a/l Kanyappan (SI-26) - forensic pathologist
9. Dr. Pornthip Rojasunan (SI-30) - forensic pathologist
10. Dr. Shahidan Md Noor (SI-31) - forensic pathologist
11. Professor Dr. Peter Vanezis (SI-32) - forensic pathologist
12. Wong Kong Yong (SI-37) - handwriting expert

DUTIES AND FUNCTION AS A CORONER:

Terms of reference as a coroner/magistrate pursuant to section 337 of the Criminal Procedure Code can be summarized as below:

- a) When did the deceased die?
- b) Where did the deceased die?
- c) How and after what manner the deceased came by his death ?
- d) Whether any person was criminally concerned in the cause of the deceased death.

This statutory mandate, according to Suriyadi J (as his Lordship then was) in the case of **Public prosecutor v Shanmugam & Ors [2002] 6 MLJ 562**, also by the learned Coroner in **Re Inquest into the death of Sujatha Krishnan Deceased [2009] 5 CLJ 783** form the perimeter and objective of this inquest:

It had always been accepted that a coroner's inquest was a court of law, though not a court of justice, as it was essentially set up to investigate and ascertain the cause of death. Apart from being shackled by a limited mandate, a coroner was also not bound to follow the usual procedure of law courts.

Duty of the learned Magistrate in hearing an inquiry under Section 337 of the CPC, can also be ascertained from the judgment of Sulong Matjeraie J [as he then was] in the case of **In Re Anthony Chang Kim Fook, Deceased [2007] 2 CLJ 362** at pp. 365-366 as follows:-

"Section 337 of the CPC serves as the terms of reference within which the Coroner conducts the inquest into the death of the deceased. As such the Coroner cannot act outside the perimeter of the said terms of reference.

It must be borne in mind that in an inquest, there are no parties, there is no indictment, there is no prosecution, there is no defence and there is no trial. It is simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused

defends, the judge holding the balance or the ring, whichever metaphor one chooses to use, see *R v. South London Coroner; ex parte Thompson* [1982] 126 SJ 625 DC.

Another case which is relevant is in *Re Loh Kah Kheng [deceased]* [1990] 2 CLJ 156 (Rep); [1990] 1 CLJ 823; [1990] 2 MLJ 126 where Mohamed Dzaidin J [as he then was] stated:

"It must be remembered that the function of a magistrate holding an inquiry under Chapter XXXII of the CPC is to inquire, when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of such death (s. 337). The 'cause of death' is defined under s. 328 to include not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by any unlawful act or omission on the part of any other person."

I shall also be bound to the **Practice Direction no 1 of 2007 : Guidelines on Inquest**, in particular paragraph G and H.

G. Findings

A magistrate who conducted an inquest must if possible find:-

- a) Who the deceased persons is; and
- b) How the person died;and
- c) When the person died;and
- d) Where the person died;and
- e) What cause the person to die;and

- f) Who, if any, was/were the person(s) who carried out the acts or omission(s) causing the death, without however making any finding on the criminal liability of such persons(s).

Magistrate shall transmit such findings to the Public Prosecutor (section 338 CPC)

H. Verdict

No verdict shall be framed in such a way to appear to determine any question of:

- a) Criminal liability on the part of a named person
- b) Civil liability

At the conclusion of the inquest, the magistrate must deliver a verdict on any one of the following:

- a) An open verdict
- b) A verdict of misadventure
- c) Death by person or persons unknown

Further guidance in common law cases had been referred to by Suriyadi J, defines the nature of an inquest proceeding: in *R v South London Coroner; ex parte Thompson (1982) 126 SJ 625 DC*, Lane CJ had this to say:

In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use.

Suriyadi J explained further :

It had always been accepted that a coroner's inquest was a court of law, though not a court of justice, as it was essentially set up to investigate and ascertain the cause of death. Apart from being shackled by a limited mandate, a coroner was also not bound to follow the usual procedure of law courts.

That being the case, however he also made this cautionary remarks:

*In spite of that clear enunciation, in that a magistrate is not bound by the usual procedure, the eventual verdict is a different story. A magistrate who conducts an inquiry must confine himself to the evidence made available to him, and at the end of the day decide on that evidence alone. Guesswork is certainly out. If any verdict is based on probability and not the established facts that verdict must certainly be quashed and open verdict returned. (referred to **Richard Evans & Co Ltd v Astley [1911] AC 674**)*

In **R v Huntbash; ex-parte Lockley [1944] KB 606**, **Viscount Caldecote CJ** remarked:

Objection is taken to the finding of the coroner on the ground that there was no evidence to support it, and that is the only point in this case...

It is not probability, however which determines verdicts, but proved facts, and if facts which justify a specific verdict are not proved at an inquest, there is no alternative but to return an open verdict.

As a coroner is bound by evidence and can find only facts which are proved in evidence and are not the result of guesswork, I think that here the coroner was betrayed into a mistake in the verdict which he arrived.

In **Re Loh Kah Keng, Mohamed Dzaidin J** (as his Lordship then was) dealt on functions of magistrate in an inquest and the extent of admitting evidence :

I am therefore of the opinion that so long as the learned magistrate was satisfied that there was evidence, in whatever form or manner elicited and whether admissible or not, which could assist her in establishing the cause of death of the deceased, she was perfectly entitled to know and take cognizance of it.

The function of a magistrate in holding an inquiry of death is to inquire, inter alia, whether any person is criminally concerned in the cause of death. The inquiry is to be held by examining witnesses on oath and the magistrate may admit any evidence which he thinks fit, especially hearsay evidence. His duty is to ascertain the cause of death and he is not bound to follow usual procedure.

In summary, my duty as a coroner means to find answers those subjects as stated in section 337 CPC and para G of Practice Direction no 1 of 2007 and this inquiry is to be conducted by way of inquisitorial process and all factual evidence brought to this inquiry for the purpose of forming a verdict needs to be proved, however, a coroner is not bound to follow the usual rules of procedure and evidence of law courts. The coroner may consider hearsay evidence as long as its relevant to the facts in ascertaining the cause of death.

STANDARD OF PROOF IN RELATION TO EVALUATING EVIDENCE IN AN INQUEST:

As to the standard of proof required of me sitting as a coroner, to test the evidence in the inquest, the coroner in the *Inquest into the death of Sujatha Krishnan Deceased* [2009] 5 CLJ 783 had this to say and i quote:

The law in Malaysia is still young when it comes to the inquest. As far as the standard of proof in an inquest is concerned, I am of the view that the test is on the balance of probabilities sliding to the beyond reasonable doubt. The following are my reasons.

This is not a criminal trial, but an inquiry to make a finding of fact. To do that, the evidence adduced must be credible as to become the basis for the coroner's finding. No one is on trial. Therefore, hearsay and secondary evidence is allowed but hearsay evidence must be scrutinized with caution. As the finding of the inquiry is legally binding, the facts must be proven beyond reasonable doubt.

I also rely on Public Prosecutor's submission as to what applies in other Commonwealth countries (as per page 4,5.and 6). Therefore after considering findings in Sujatha Krishnan's inquest, Australian and UK position, on a finding of suicide or homicide, the standard of proof is beyond reasonable doubt.

The standard of proof in an inquest in Australia is well stated by Michael Barnes, State Coroner of Brisbane, in the Inquest into the death of Liam Richard Vidler-Cumming at page 3 of the findings as follows:

"A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the Briginshaw sliding scale is applicable. This means that the significant the issue to be determined the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.

Of course, when determining whether anyone should be committed for trial, a coroner can only have regard to evidence that could be admitted in a criminal trial and will only commit if he/she considers an offence could be proven to the criminal standard of beyond reasonable doubt."

In the United Kingdom, the standard of proof of an inquest is also on a balance of probabilities except where a finding that a criminal offence (such as suicide or unlawful killing) has occurred where the standard of proof is beyond reasonable doubt.

As per *Watkins L.J* at page 1029 in the judgment of the Divisional Court in *R v West London Coroner, ex-parte Gray and others [1987] 2 WLR 1020* as follows:

" It will be noted that Lord Widgery CJ alluded to the stringent test, but without reference to what may be called the conventional standards of proof, I cannot believe, however, that he was regarding proof of suicide as other than beyond reasonable doubt. I so hold that was and remains the standard. It is unthinkable, in my estimation that anything less will do. So it is in respect of a criminal offence, I regard as equally unthinkable, if more so, that a jury should find the commission, although not identifying the offender, of a criminal offence without being satisfied beyond a reasonable doubt.

As for the other verdicts open to a jury, the balance of probabilities test is surely appropriate save in respect, of course, of the open verdict. This standard should be left to the jury without any of the refined qualifications placed upon it by some judges who have spoken to some such effect as, the more serious the allegation the higher degree of probability is required."

*(The above judgment of the Divisional Court in respect of the standard of proof in an inquest was subsequently affirmed by the Court of Appeal in the case of *R v Wolverhampton Coroner, ex-parte McCurbin [1990] 1 WLR 719* at pages 726-728).*

FACTS DISCLOSED IN THE INQUEST

From the testimony of MACC officer Mohd Anuar (SI-16), he was appointed as an investigating officer on 15.7.2009 to investigate an a MACC report made pertaining to allegations of misuses of funds involving State Assembly Members. In course of investigation, he and 4 other MACC officers had went to YB Ean Yong Hian Wah's office in Seri Kembangan where in , a certain Ms. Yvonne Lee , in response to the question regarding the where about of 'claim documents made by the State

Assemblyman of Seri Kembangan', then informed them that the aforesaid claim documents were not in that office and instead was handled by the deceased who had an office at the SUK building in Shah Alam.

At approximately 3.00pm on 15.7.2009, the MACC officers arrived at SUK building and had met with the deceased, deceased had cooperated with them. Shortly after that, YB Ean arrived at the office accompanied by reporters, Mohd Anuar felt uncomfortable and he and his team left the office to meet up with Hairul Ilham (Head of the Investigations Unit at MACC Selangor) at a nearby parking area, where Mohd Anuar was advised to call for instruction from the Deputy Director of Operations i.e Tuan Hishamuddin.

Hairul Ilham, Mohd Anuar and his team then returned to deceased's office around 3.45pm on 15.7.2009 and asked that the deceased to accompany them to MACC office at Plaza Masalam and they had also seized a laptop and CPU from the office. The deceased arrived at the MACC office at Plaza Masalam around 6.00pm on 15.7.2009.

The time of arrival is further corroborated with CCTV pictures in ID-4 and sworn evidence of Mr Manoharan s/o Malayalam (SI-33).

WHO THE DECEASED PERSON IS?

There is no dispute that the deceased had been identified as Teoh Beng Hock, deceased's brother named Teoh Meng Kee (SI-24) testified on the 1.10.2009 (refer to NOP) as to how he came to know of his brother's death.

WHEN THE DECEASED DIE?

The factual evidence from testimony of SI-16, SI-19, SI-29, SI-21 and SI-34 are useful to understand the events that transpired which involved TBH before he was found dead, in coming to the time of his death. It is because those were the last persons who TBH was known to be with.

I refer to NOP of SI-16, SI-19, SI-21 and SI-34 and below are the time variables:

Mohd Annuar, SI-16 testified that TBH wanted to have a rest at MACC's office after the interviews although he was released at 3.30am on 16.7.2009.

Raymond Nyion anak John Timban, SI-23 testified that he saw TBH lying down on a sofa in front of Mohd Nazri's office at 6.00am on 16.7.2009.

Tan Boon Wah, SI-34 testified that he crossed path with the deceased around the pantry area around 5.00am to 6.00am on 16.7.2009.

Body of TBH was discovered by SI-1, Siti Zabeda bt Yahya on 16.7.2009 at around 1.00pm -1.30pm.

There seems to be an unexplained gap in the period from 6.00am till 1.00pm on 16.7.2009

Estimation of time of death would then depends on forensic expert findings and observations into any of the followings:

Presence of primary flaccidity

Onset and progress of hypostasis(post-mortem lividity)

Rigor mortis – observed

Device: rectal thermometer not used

Stomach content and state of emptying –test done

Entomology observations

Dr. Khairul Azman Bin Hj Ibrahim (SI-10) testified that he found rigor mortis on the body of TBH at 7.15pm on 16.7.2009 and believed that the deceased came by his death 6-8 hours before, which makes it between 11.15 am till 1.15pm on 16.7.2009

Dr. Prashant Naresh Samberkar (SI-15) testified that he found rigor mortis on the body of TBH at 7.15pm on 16.7.2009 and believed that the deceased came by his death 8-12 hours before, which makes it between 7.15 am till 11.15am on 16.7.2009

Dr. Pornthip Rojasunan (SI-30) believed that TBH time of death to be approximately 8-12 hours before 7.15pm on 16.7.2009 which makes it between 7.15am till 11.15am

Therefore , based on these experts evidence, the deceased came to his death at approximately 7.15am till 11.15am on 16.7.2009.

WHERE DID THE DECEASED DIE?

Its irrefutable that TBH body was found dead on the service corridor on the 5th floor of Plaza Masalam , Shah Alam and Dr. Khairul Azman Bin Hj Ibrahim (SI-10),Dr. Prashant Naresh Samberkar (SI-15), Dr. Pornthip Rojasunan (SI-30), Dr. Shahidan Md Noor (SI-31) and Professor Dr. Peter Vanezis (SI-32) have the same opinion that TBH was alive before impacting the 5th floor.

According to Dr. Prashant :

- The injuries sustained by TBH are consistent with fall from height.
- The amount of soft tissue and bruising and soft tissue hemorrhaging that have occurred is consistent with TBH being alive at time of impact.
- 700ml of blood and blood clot was found in the left chest cavity and 100ml of blood was found in the right chest cavity and such amount of bleeding is consistent with TBH being alive at time of impact.
- The injury to the skull, collection of blood clot or hematoma on the vertex of the skull around the top of the head is consistent with TBH being alive at time of impact .
- The sub arachnoid hemorrhaging on the right side of the brain surface can only occur when a person is alive at time of impact.

HOW AND AFTER WHAT MANNER THE DECEASED CAME BY HIS DEATH?

Before I dwell further, as to the cause of death, ive confirmed that all pathologists had agreed that the cause of death was as result of multiple injuries sustained by TBH consistent with fall from height.

As to how and after what manner in which TBH died, there are two theories which dominate throughout this inquest propounded by interested parties i.e family of deceased and MACC, being death by homicide and death by suicide. Countless questions were asked of all experts in the effort of establishing such theory. After the second post mortem, the evidence of neck injury was the most crucial element to suggest death by homicide, although its been put forward by a single expert, whereas MACC relied heavily on the existence/discovery of "suicide note" at the end stage of this inquest by the investigation officer ASP Ahmad Nazri Bin Zainal (SI-35),

Notwithstanding such contradicting possibilities, as a coroner, I am duty bound to consider it in accordance with the proper test in place.

SUICIDE :

Was there suicidal intention ?

Evidence from brother reveals that TBH was supposed to get married soon, that he leads a normal lifeand suffers no psychological illness.(refer NOP)

Forensic pathologists, Dr Prashant, was of the opinion that most likely that TBH had committed suicide. However, this opinion need to be corroborated with factual and direct evidence.

A note was purportedly found in TBH bag by ASP Nazri, marked as (I-168A) became fact in issue as to its content and whether it was in fact a suicide note.

Handwriting expert, Wong Kong Yong (SI-37) testified and produced 2 reports which were marked as (I-171) and (I-172). However, his evidence only goes as far as to

establish that the writing in (I-168A) is similar to that documents found in TBH's bag, two outstanding issues were not resolved:

- a. The documents have not been ascertained to contain TBH's handwriting
- b. No samples of TBH's writing were obtained for the purpose of the examination of (I-168A) by Wong Kong Yong.

I am guided by the decision of the High Court in *Public Prosecutor v Mohamed Kassim Bin Yatim [1977] 1 MLJ 64* that it is settled law that evidence of a handwriting expert can never be conclusive because it is only opinion evidence.

Futhermore, as a general rule , the evidence of handwriting expert is always of questionable value particularly in the case of Chinese characters.

As per Thomsom CJ in the case of *Teng Kum Seng v Public Prosecutor [1960] MLJ 225* :

"Finally it was said that the evidence of the handwriting expert was given undue weight.

Such evidence is of course always of very questionable value, particularly in the case of Chinese characters.

The ratio decidendi was later approved by the Court of Appeal in *Lee Ing Chin@Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97* wherein Gopal Sri Ram JCA said and I quote:

"In his judgment, the learned judge reproduced passages from several cases that have expressed a negative view about the nature of expert evidence. We do not consider it necessary to go through all those cases here. We respectfully adopt the views expressed in those cases about the unsatisfactory nature of the opinion evidence of handwriting experts. However, we consider it useful to mention an authority not referred to in the judgment under appeal. We do so only because it is a case that is of particular significance to the present case as it also

involved the proof of handwriting in Chinese characters. It is *Teng Kum Seng v Public Prosecutor [1960] MLJ 225* where Thomson CJ, when dealing with a complaint that the evidence of a handwriting expert had been given undue weight, said: "Such evidence is of course always very questionable value, particularly in the case of Chinese characters."

Watching Brief counsel for MACC relied on TBH's cautioned statement (SI-69) as the reason for TBH suicidal action. It was assumed that TBH felt so guilty and was afraid to leave MACC office because he was ashamed to face society especially his boss. It is also submitted that TBH was seen to be agitated, uneasy and looked guilty.

I regret to observe that no forensic psychiatrist did a report on TBH state of mind or the impugned note (I-168A), an attempt was made at the earlier stage of inquest but was not successful. I don't think that as a coroner, I am qualified to make my own assessment purely from such assumption. At best, I can only assume that the note (I168-A) was authored by TBH but I am not qualified to say that it's a suicide note. I found guidance from these case laws:

Re Derek Selby, said by Sharma J, I quote: "the law is that suicide is not to be presumed".

PP V SHANMUGAM [2002] 6 MLJ 571, SURIYADI J had cautioned:

Guesswork is certainly out. If any verdict is based on probability and not the established facts that verdict must certainly be quashed and on open verdict returned.

Thus, in considering suicide as a possibility to TBH's manner of death, I find that there remain some unsettled issues which are still questionable and to fulfill this verdict of suicide would entail some form of guesswork on my part in order to connect the dots, so

to speak, which I find as not acceptable. I therefore rule out the verdict of death by way of deceased committing suicide.

HOMOCIDE?

STATE AND FAMILY contention that deceased was assisted/manually pushed/moved out of window by unknown persons but most definitely MACC officers , telling evidence was the bruise on neck came to light on second post mortem in which Dr Shahidan bin Md Noor observed in his report (I-82):

A bruise on the left side of neck measured 4x3cm with underlying left platysma muscle contusion noted measured 4x3cm. The right platysma muscle was also contused measured 1x1cm.

The conclusion in his report was that the injuries on the neck were most likely formed or produced by the impact of fall. The pattern and severity of them were in keeping with the incident or event.

Subsequently, during examination on oath, he made further revelation that some force was applied as to the cause of the bruising on the neck. He also observed that the deceased had suffered a pre-fall injury which could have caused the deprivation of oxygen to his brain resulting in loss of consciousness and/or disorientation.

This view was supported by Dr. Pornpip and further she had opined that the deceased suffered blunt force trauma to the neck.

Professor Peter Vanezis in his evidence also did not rule out the possibility of pressure to the neck region.

Counsel for Selangor State also referred to Dr Prashant evidence regarding finger drag marks on the window as indicative of a person resisting a fall. However no forensic examination was undertaken to prove such opinion.

Subsequently, Dr Shahidan had opined that the nature of the neck injury, could have caused a reduction in the level of oxygen reaching the deceased brain, causing a cerebral edema, mild or moderate hypoxia, confusion, fainting and decreased motor control. However, further confirmation by way of examining the edema was not possible as the neck tissue area had been dissected.

It is submitted that the consequences of such injury raise serious doubts as to the capability of the deceased exiting the window unassisted, both physically and mentally.

Dr Pornpip had identified the type of ankle injuries as consistent with the fall of an unconscious or semi-conscious person due to the fact that multiple fractures were found on the right ankle only. She further concluded that the deceased could not have landed on his feet as suggested by Dr Prashant due to the lateral impact of the bones and the fact that no ring fracture was present on the skull and she used empirical evidence to support her finding that no direct linear fall on deceased feet had occurred and no evidence of injuries from "transferred force".

In addition, counsel also referred to 2nd DNA report by Dr Seah Lay Hong (SI-19) concerning the DNA of "one other unknown male contributor" was detected at deceased waistbelt as favouring involvement of third party.

Counsel submitted that the deceased body had fallen in a manner which was suggestive of him having been unconscious due to finding of flailed chest and lacerations on the chin.

I find that the theory suggesting deceased state of unconsciousness as not consistent with other pathologist. For instance, I refer to Dr Prashant's evidence regarding the tear on the seat of the deceased 's trousers was caused by extension of the loin consistent with deceased landing on his feet, and other injuries suffered to the long bones as being consistent with deceased "guarding effect" i.e conscious attempt to break his fall. Dr Pornpip did not give her version as to the possibility of such occurrence if the deceased did not land feet first. There is also the unchallenged evidence of scratch marks at sole of the deceased shoes which were consistent with the deceased being in a sitting

position on the window ledge, no evidence was given as to whether such posture is physically possible by a person in a state of unconsciousness.

In furtherance of considering the neck injury, there was also the alleged suspicion of cover up being collectively done by MACC in denying that force was used on the deceased and in reference to the similar fact evidence of injury being inflicted on Sivanesan a/l Thangaveloo, and after evaluating the evidence of Dr Shahidan, Dr Porntip and Prof. Dr Venezis, I find that there exist sufficient evidence to confirm this injury as a pre-fall injury. However, I also find that there is no sufficient evidence to confirm beyond reasonable doubt that this pre-fall injury did in fact, facilitated or resulted or contributed to the demise of the deceased.

As for the 2nd DNA report, in the absence of direct factual evidence, to make assumption as to the existence of a third party i.e other unknown male contributor in direct connection with the pre-fall injury is as good as another guesswork which have no evidential value. I therefore rule out the verdict of death by way of homicide.

CONCLUSION

Based on the reasoning given , my conclusion of this inquest is the finding of open verdict

On a personal note, I would like to express my gratitude to all counsels whom had painstakingly assisted me throughout this inquest and special thanks to Mr Tan Hock Chuan, Mr Abazafree, Mr Malik Imtiaz, Mr Gobind Singh Deo, Dato' Abdul Razak b Musa, Mr Rajpal Singh, Mr Saleem Bashir for their outmost dedication and co-operation in assuring the smooth running of this inquest. This inquest is hereby closed.