# Vijayakumar s/o Veeriah v Public Prosecutor
# [2006] SGCA 9

**Case Number** : Cr App 11/2005

**Decision Date** : 14 March 2006

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; Choo Han Teck J; Yong Pung How CJ

**Counsel Name(s)** : Peter Keith Fernando (Leo Fernando) and Jeeva Aral Joethy (Joethy & Co) for the appellant; Christina Koh (Deputy Public Prosecutor) for the respondent

**Parties** : Vijayakumar s/o Veeriah — Public Prosecutor

*Criminal Law – Special exceptions – Sudden fight – Whether the trial judge erred in his findings of fact – Section 300 Exception 4 Penal Code (Cap 224, 1985 Rev Ed)*

14 March 2006

**Choo Han Teck J (delivering the judgment of the court):**

1 The appellant was convicted of murdering one Suthagar s/o Raja Ram Thomas ("Suthagar"). He appealed against this conviction. The salient facts are as follows.

2 The appellant was a childhood friend of Suthagar. Suthagar had a girlfriend called Nisha with whom he jointly rented a flat in March 2004 at Block 504, Bukit Batok. They contributed $300 each towards the monthly rent of $600. Suthagar became unemployed in May 2004 and was unable to contribute his share of the rent. The trial judge accepted the evidence that the appellant moved in to stay in the flat with Suthagar and Nisha in August 2004 although it was not clear to him that the appellant had contributed towards the rent. This was not an important point.

3 In late August 2004 the landlord asked for $1,800 being arrears in rent. The appellant and Nisha decided to pay $1,000 first and the balance in September. The appellant, on his own initiative, approached Nisha's sister-in-law, Umarani, to pawn her jewellery to help alleviate the appellant's and Nisha's financial hardship. The appellant promised Umarani that he would redeem the jewellery for her on 1 September 2004. So Umarani pawned her jewellery on 25 August 2004 for $1,100. Nisha paid $1,000 to the landlord and the appellant took the remaining $100 as well as the pawn ticket. On 1 September 2004 the appellant did not redeem Umarani's jewellery and, instead, asked her to get Suthagar and Nisha to do so for her. Nisha paid Umarani $1,000 of her own money. Since they were unable to continue paying rent, Nisha and Suthagar decided to give up the tenancy by 5 September 2004.

4 Nothing significant occurred between 2 September to 3 September 2004 except for the mysterious loss of the identity cards of Suthagar and Nisha as well as Nisha's passport. By the evening of 3 September Nisha's identity card and passport had been found but not the identity card of Suthagar. Nothing turned on the event concerning the identity cards or passport. The significant facts pertaining to the charge against the appellant took place about 9.30pm on 3 September 2004, when Nisha saw Suthagar in a nearby coffeeshop where she saw him talking to the appellant. She then went to the flat. Later, at 11.15pm, Suthagar called Nisha and asked her to meet him at the void deck of their flat because he had something important to discuss with her. When Nisha reached the void deck she saw that her sister, Siti (who was staying with Nisha and Suthagar at that time), was there. The three of them saw the appellant approaching them and he looked angry. Suthagar quickly told the women to follow him to his mother's flat nearby at Block 240. While the women waited

downstairs, Suthagar went to the flat, and whilst he was there the appellant telephoned him (Suthagar) many times, asking him to accompany him (the appellant) to night clubs. Suthagar then went downstairs again to meet the two women. He was still talking to the appellant over the mobile telephone. Nisha said that at one point Suthagar looked worried, and he told her that there was some trouble between the appellant and him. It was not known what that problem was.

5 Suthagar told Nisha and Siti to wait for him at the void deck of Block 504 while he fetched the keys from the appellant. He came back to them about half an hour later and told Nisha to wait at the back of the block while he went up to the flat to discuss some matters with the appellant. When the two men were in the flat, the appellant stabbed Suthagar several times resulting in wounds to the right side of his face, the top and left side of his head, and the right side of his back. The appellant then left the flat. When he saw Nisha, he stabbed her twice in the back and then said to her, "Go and see what kind of situation your boyfriend is in now." He then went to the Jurong Park where he threw the knife into the Jurong Lake. He was arrested four days later on 7 September 2004. The trial judge also heard evidence of the conversations between the appellant and Umarani over the mobile telephone after Nisha had been stabbed. Nothing very much turned on these conversations.

6 The appellant admitted that he killed Suthagar. He denied, however, that his conduct amounted to murder because he acted in self-defence and in the circumstances of a sudden fight. Each of these two situations was a statutory defence under the Penal Code (Cap 224, 1985 Rev Ed). Section 96 prescribes that "[n]othing is an offence which is done in the exercise of the right of private defence". This defence, if successfully proved, would amount to an absolute defence. It is a defence that would fail if the accused person exceeded the power given, unless he brings himself within Exception 2 to s 300 of the Penal Code, which provides as follows:

> Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

If the accused person succeeds under Exception 2, his offence would not be murder but culpable homicide not amounting to murder. Exception 4 to s 300 provides that culpable homicide is also not murder if it is "committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner". It would be of no relevance for the purposes of this exception as to which party offered the provocation or committed the first assault.

7 Suthagar was a slightly built person, being 167cm tall and weighing 52kg. The appellant was a larger man, being 182cm in height and weighing 75kg. The disparity in build would ordinarily not warrant the bigger man using a knife against the unarmed smaller man. The trial judge was entitled to take this into account together with the fact that the appellant went downstairs immediately after assaulting Suthagar and, there, stabbed Nisha as well. The judge would also have been entitled to consider that the assault on Suthagar was not the consequence of a sudden fight because of the appellant's continued but separate aggression on a third person ("Nisha") who was not present at the assault on Suthagar. In the circumstances, we saw no reason to disagree with the decision of the court below.

8 In respect of the defence of self-defence, the only version of the fight was the version of the appellant. The trial judge did not accept the evidence of the appellant, and accordingly, rejected the defence of self-defence as well as the defence under Exception 2. The number and nature of the injuries found on Suthagar's body, as well as the absence of injuries on the appellant, supported the

court’s decision. It is generally unnecessary for an appellate court to examine in minute detail how the fight began or how it progressed, or how any particular wound was inflicted, unless there is a specific issue arising from any particular blow or injury. Such was not the case here. An account of the fight was given by the appellant and the trial judge, as the finder of fact, was best placed to determine if that story was acceptable or not. In this case the judge thought not.

9 There was nothing in this appeal that showed that the findings of the trial judge were made against the weight of the evidence, and accordingly we dismissed the appeal.