

SUPREME COURT ASSIZES SECOND TERM 2012

STATE V/S AVINASH TREEBHOOWON & SANDIP MONEEA

CHARGE OF MURDER

(CLOSING SPEECH BY MEHDI MANRAKHAN, PRINCIPAL STATE COUNSEL)

My Lord,

My Learned Friends for the Defence,

My Learned Friends holding a Watching Brief,

My 2 Learned Friends assisting me for the State,

Ladies and Gentlemen, Members of the Jury,

INTRODUCTION

The time has now come for me to address you a final time and make my closing speech, so as to enable you to reach a right and proper verdict.

Ladies and Gentlemen, Members of the Jury, this has indeed been the most challenging and, at the same time, taxing trial that I have conducted so far in my career at the DPP's Office. I want to thank you for the patience that you have shown in listening to the evidence. I know it has been very taxing for you as well.

You will appreciate, Members of the Jury, the seriousness of the present case. A young Irish Couple in the prime of their youth, who after a fairytale wedding, had chosen Mauritius, as a destination for their honeymoon. Little could anyone have foreseen that their honeymoon would in fact turn into the most unforgettable nightmare. The husband left Mauritius as a widower. His wife had been brutally murdered in the very hotel room where they were meant to spend what would have been the best days of their married life.

Therefore you will appreciate, given the seriousness of the matter, why this trial has lasted for 7 weeks! And it also highlights the heavy responsibility that befalls upon you now. You, Members of the Jury, you are now called upon to perform perhaps the most important task that you will ever be called upon to perform for your country! And you will have to fulfill your duty with great equanimity and dispassionately.

Before I take you through the evidence I feel that I need to make some preliminary remarks so that your deliberations are not clouded by irrelevant matters.

Members of the Jury, in their enthusiasm, in their attempt, in their efforts, to present their case to the best of their ability, my Learned Friends for the

Defence made strong criticisms of the conduct of the Police Enquiry and of the MCIT Team led by ACP Yousouf Soopun, a seasoned officer of 40 years experience. These matters, Members of the Jury, have no particular bearing on the matter you have to decide. You are not here to say that the Police have conducted their enquiry in this way and it would have been better to do it in another way. That is no particular concern of yours. What you are here for, Members of the Jury, is not to pass judgment on the conduct of the Police but to try the 2 Accused charged with the present offence of Murder in accordance with the evidence heard in this court room.

Furthermore, Members of the Jury, instead of relentlessly criticizing the manner in which our Police conducted its enquiry into the present murder, they should have been congratulated for having resolved such a high profile and heinous murder in record time. ACP Yousouf and his team should, Members of the Jury, be commended! Thanks to him and his team, the 2 Accused have been tried within a reasonable time from the day they were arrested, in conformity with section 10 of our Constitution.

Members of the Jury, a lot has been said about the absence of the DNA of the 2 Accused on the crime scene or on the body of the deceased. I want to tell

you clearly once and for all that the absence of the DNA of the 2 Accused on the crime scene or on the body of the deceased does not mean that they are not guilty. You need to look at the evidence which is before you to decide whether on this evidence you can find the 2 Accused guilty. Likewise, the absence of fingerprints of the 2 Accused on the crime scene does not mean that they were not there. You must again look at the evidence that has been put before you and decide whether they were there or not.

Members of Jury, you will remember I told you in my opening address to you that you are the sole judges of fact in the present matter. You and you alone can decide on matters of fact. You must not be swayed by grandiloquent metaphors and speeches, blurry images which are unsupported by the evidence. Counsel do not go in the witness box and cannot be cross-examined. If I stand here and tell you that I have slapped myself more than 10 times and have had no injuries to my face, this is not evidence. If I tell you that I have had someone hit me 20 times on my heels with a “Raccord Robinet” and I have no injuries on my heels, again this is not evidence. Evidence, Members of the Jury, must come from the witness box and be tested in cross examination. Evidence cannot come from where I am standing.

Therefore, Members of the Jury, your verdict must be based on the evidence coming from the witness box and nowhere else. In that respect, the wise words of Charles Dickens in his famous book “The Great Expectations” should be your beacon: **“Take nothing on its looks; take everything on evidence. There's no better rule.”**

ELEMENTS OF MURDER

Members of the Jury, as I told you in my opening speech, the State bears the burden of proving beyond reasonable doubt that an act of violence has been willfully committed by the 2 Accused on the person of late Michaela McAreavy which has resulted in her death and at the time the act of violence was inflicted, the 2 Accused intended to kill her and that they had also premeditated her killing.

FATAL INJURIES AND INTENTION TO KILL

Members of the Jury, it will be easy for you to conclude that an act of violence had been perpetrated on the person of late Michaela McAreavy resulting in her death. It will also be easy for you to conclude that the act of violence was committed with a clear intention to kill her.

In that respect, you must consider the evidence of the Chief Police Medical Officer, Dr Gungadin. You will recall that Dr Gungadin was the person who carried out the autopsy on the body of late Michaela McAreavy. His autopsy findings are contained in his Report dated 9 February 2011 (Document AP). The evidence of Dr Gungadin has remained unchallenged.

In court, Dr Gungadin described in vivid details the injuries that he found on the body of late Michaela McAreavey. He told us that Michaela died as a result of asphyxia due to compression of the neck.

Several bruises were noticed over the neck region of Michaela. He told us that these bruises were compatible with fingertips and at some places the bruises had been caused by a large surface, something like a forearm. Two bruises were also observed over the right and left collar bones and it was his expert opinion that these had been caused simultaneously by pressure been applied to the neck and it appeared to him that this again was pressure being applied by a forearm over the lower part of the neck.

Michaela also had bruises on the back of her head which the doctor attributed to the head hitting a hard surface. This, Members of the Jury, is compatible with the version of Accused No.1 that when he pushed Michaela the

latter fell on her back. Her head must obviously have hit the floor when that happened.

There were also several linear abrasions in horizontal lines in front of the neck. The doctor explained that it was his expert opinion that there had been a violent struggle and if pressure was being applied over her neck, Michaela would have had the natural reflex to push away or alleviate the pressure that was being applied to her neck. When that happened, Michaela's own finger nails could have produced the abrasions over her neck. It was his expert opinion that this is what happened in this case. Therefore, Members of the Jury, Michaela tried desperately to remove the hand or arm that was strangling her and in the process caused abrasions on her neck.

The doctor was adamant that this was a case of asphyxia solely due to compression of the neck and he discarded any possibility of asphyxia caused by drowning. Dr Gungadin told us that considerable force must have been applied to the neck to cause the hyoid bone to break.

Dr Gungadin also discarded any use of a belt or rope which can cause ligature strangulation. He was sure 100% sure that this was not a case of ligature strangulation which could have been caused by a belt.

He also stated that, with the amount of injuries over her neck, Michaela died within two to three minutes. He further stated that for her to have gone into asphyxia, pressure would only need to have been applied to her neck for one to two minutes.

Members of the Jury, you will recall that in my opening address to you I told you that Intention to kill is the knowledge on the part of an accused party at the time he commits the act of violence on the victim that his act is going to cause death.

Intention implies that the wounds and blows the Accused inflicts on the victim have been inflicted with the particular purpose of causing his or her death. Intention is a psychological factor, a subjective element. So that to find out whether an intention to kill exists you should look at the circumstances surrounding the commission of the crime.

For example, the nature of the weapon or instrument with which the victim is hit, the degree of violence, the part or parts of the body at which the victim is hit – all these are relevant factors which will help you say whether the Accused Parties had the intention to kill the victim.

It is clear from the medical evidence of Dr Gungadin that the injuries inflicted over the neck region of Michaela were of such a nature, that there can be no doubt that whoever inflicted those injuries on her neck did so with the clear intention to kill her. The amount of force used and the length of time the force was applied over her neck clearly showed that whoever killed Michaela had the intention to kill her.

So we have, Members of the Jury, been able to prove beyond reasonable doubt that an act of violence was perpetrated on Michaela which resulted in her death. We have also been able to prove to you beyond reasonable doubt that the act of violence was perpetrated with a clear intention to kill her.

We are now left with the crucial questions whether Accused No.1 and Accused No.2 killed Michaela and whether they killed her with premeditation.

THE POLICE ENQUIRY

Members of the Jury, it is not disputed that the murder of Michaela McAreavy occurred in the afternoon of 10 January 2011, at Legends Hotel, in hotel room 1025, sometime between 2.30pm to 3pm, according to the undisputed evidence of Dr Gungadin. You yourself, Members of the Jury, had

sought and obtained this precision from Dr Gungadin. You will appreciate that this was a crucial piece of evidence in this case.

As you are aware, Members of the Jury, this murder occurred on the premises of a five star hotel and it was a delicate and sensitive environment within which the Police Authorities had to operate. The Police had even brought in Michaela's husband, John James McAreavy, for enquiry at Piton CID Office.

The first major breakthrough in the Police Enquiry came on the night of the murder itself when they obtained a major piece of evidence at around 8.30-9pm. That major piece of evidence was the door reading to room 1025, which showed that 2 minutes prior to Michaela entering the room, a magnetic card GMK5 Supervisor 2, had been used to access room 1025. The evidence shows that this magnetic card was never found. The evidence also shows that a dummy card had been fabricated to replace that GMK5 Supervisor 2 magnetic card in the control room so that it would go unnoticed. That dummy card was produced before you and you will recall, Members of the Jury, that is was unreadable.

Following this major breakthrough it became clear to the Police that John James McAreavy should be discarded as a possible suspect in the murder of his wife. The door reading of room 1025 would then lead to the arrest of 3 suspects

who were either in room 1025 or in its vicinity at the material times on the day of the murder. Those 3 suspects were the 2 Accused and Raj Theekoy. They were all 3 arrested on 11 January 2011. Accused No.1 was a room attendant at Legends Hotel, Accused No.2 a Floor Supervisor and Raj Theekoy, another room attendant.

On 12 January 2011, Raj Theekoy gave a statement to the Police where for the first time he told the Police what he knew in relation to the murder. Raj Theekoy told us that he did so after having met with his wife and mother on that day at Mapou District Court and they told him: "**ene madame fine mort, si tu conne quitte chose dans zaffaire la, raconte tout la verite, pas peur, nou derriere toi.**" This gave him courage to relate everything he knew about the murder. Raj Theekoy, Members of the Jury, would implicate both Accused in the murder.

On the same day, that is 12 January 2011, Ravindradeo Seetohul, a room service attendant at Legends, gave a statement where he told the Police that on the day of the murder he saw Accused No.2 at around 14.25hrs going in the direction of room 1025 while Accused No.1 was still cleaning that room.

The 2 Accused had up until then told the Police that they knew nothing about how Michaela McAreavy had been murdered.

CONFESION OF ACCUSED NO.1 INADMISSIBLE AGAINST ACCUSED NO.2

Members of the Jury, I propose to consider the case against each Accused separately precisely because, and His Lordship will no doubt address you on this in his Summing Up, the confession of Accused No.1 cannot be used against Accused No.2. Put bluntly, whatever Accused No.1 has stated in his confession which implicates Accused No.2 cannot be used against the latter. This is the law and we have to apply it strictly.

CASE AGAINST ACCUSED NO.1

Members of the Jury, Accused No.1 was confronted with the version of Raj Theekoy on the 12 January 2011. And when he was confronted with same, he must have realized that his game was over and that he could no longer hide the truth. He signed a Diary Book Entry on the same day where he stated the following: "**Mo accepter moi avec mo supervisor Sandip Moneea, nou fine touye sa touriste la dans la chambre 1025, lundi le 10 Janvier 2011, mais mo pou donne mo l'enquete dans presence mo avocat.**" Members of the Jury, you have seen that Diary Book Entry.

You will recall also, Members of the Jury, that Accused No.1 would meet his counsel Mr Rutna on the same night at MCIT Office and Mr Rutna was made

aware of the Diary Book Entry signed by his client earlier on. After speaking to Mr Rutna, Accused No.1 would state: "**Mo la tete fatigue, mo pas pou donne l'enquete zordi plutot demain.**" Members of the Jury, you have also seen this Diary Book Entry.

You will recall also, Members of the Jury, that CI Gerard told us that the atmosphere at the MCIT Office on that night was cordial and he even shared his portion of fried rice with Mr Rutna.

The next day, that is, on 13 January 2011, Accused No.1 gave a confession in presence of his counsel Mr Rutna and related in detail his participation in the murder of Michaela McAreavy. He related how he had been cleaning room 1025 when he saw a black wallet while he was dusting the dressing table from which one to three notes were protruding. He decided that he would still steal one or 2 notes. While he was about to steal from the wallet he was caught red handed when Michaela suddenly entered the room. He would relate how he pushed her to get away and she fell on her back on the floor. He would then grab her legs while she was being strangled and killed. He would then help to put her in the bathtub in the bathroom, open the tap to let water out in order to get rid of all traces ("**pou efface traces**"). He also stated that while his initial intention was

merely to steal, he decided to kill the lady because she had clearly identified him and she would have exposed him.

Members of the Jury, I will now tell you why you should believe this confession and you should attach full weight to it. Members of the Jury, you should believe this confession for the following reasons –

1. The evidence of Dr Gungadin relating the injuries sustained by Michaela McAreavy and the manner in which she was murdered tallies with the version of Accused No.1 in his confession.
2. The Autopsy report dated 9 February 2011 came well after the confession so the police could not have fabricated the precise manner and details of how Michaela was murdered.
3. The time Michaela entered room 1025 as per the version contained in the confession tallies with the testimony of Mark L'Olive, the Banyan Restaurant Supervisor.
4. The confession refers to events occurring in room 1012 where Accused No.2 tells Accused No.1 to go and clean room 1025 despite

the DND Sign on the door. These events have never disputed and could not have been fabricated by the Police.

5. The confession also contains the fact that Accused No.1 had met John McAreavy at some point prior to the murder where the latter told him to come back in 5 minutes to clean his room. Again this is not disputed and was confirmed by John McAreavy. This again could not have been fabricated by the Police.
6. The confession also contains events where Accused No.1 met with Ravindradeo Seetohul while he was cleaning room 1025. This again is not disputed and was confirmed in court by Ravindradeo Seetohul.
7. Accused No.1 stated in his confession that Michaela was wearing a pale blue bra and knicker. The bikini which Michaela wore on the day she was murdered was produced before this court, Members of the Jury, and you will recall that the colour which stands out predominantly from the bikini is pale blue.
8. The version given by Raj Theekoy on the eve of the confession was so damning against Accused No.1 that the latter had been cornered and had no way out except to confess.

9. When Accused No.1 gave his confession he was assisted by no other person than his own counsel than Mr Ravi Rutna, whom you saw before you in this very court room.

10. After making the confession, Accused No.1 told his father: "Pa blier to garcon aster. Mo fine fer ene erreur." And he burst into tears.

Members of the Jury, Accused No.1 has told us that the confession of 13 January 2011 is not his. That he does not know what is in the confession and that he had been made to sign several times without knowing what he was signing. He even told us that Mr Rutna had been manhandled by CI Gerard and PC Manoovaloo. Moreover, CI Gerard would have used very foul language towards Mr Rutna and would, at some point in time, even have threatened to throw a chair at Mr Rutna. Accused No.1 also told us that PC Manoovaloo had a "**cahier**" (a copy book) with him and he was dictating to CI Gerard what to write, all this under the watchful eyes of Mr Rutna who just sat there quietly.

Members of the Jury, can we seriously believe Accused No.1 when he tells us that all this occurred during the recording of his confession?

Members of the Jury, it is easy to make such grotesque allegations. Had the Defence really intended these allegations to be taken seriously one would have

expected Mr Rutna himself to have come and confirm these vile allegations in the witness box and to have subjected himself to the test of cross examination. Let us not forget that Mr Rutna was a co-counsel for Accused No.1 at the start of the trial and he withdrew himself announcing, with great pomp and circumstance, that he will be back. Members of the Jury, the reasons explaining his absence are obvious: the allegations were totally unfounded. Likewise we were told with similar enthusiasm and verve that one Seenarain Mungroo would come and tell us how he was manhandled by officers of the MCIT. Alas, he suffered the same fate as Mr Rutna. Perhaps, Members of the Jury, this is what my Learned Friend Rama Valayden had in mind when he referred to David Copperfield in his opening speech?

Accused No.1 also told us that he had been subjected to various forms of police brutality and torture right from the moment he was taken from his place of work at Legends Hotel.

Accused No.1 has told us over 2 and a half days in the witness box how he had been beaten and tortured by the Police. Members of the Jury, you have seen him giving evidence before you. You have watched him carefully, you have observed his demeanour and you have considered his evidence. Can you

seriously attach any weight to his testimony? Can you seriously believe him? Let us not forget that this is a man who would fight with his father over buying a gas cylinder and yet find the money to go rent a house for him and his wife to live in. He is also a man who would ask his poor labourer father to come in the witness box in order to rescue ("sappe") him.

It is clear that Accused No.1 had come before you and regurgitated a concocted and rehearsed story.

Members of the Jury, this was the first time a year and a half after his arrest, at his trial, that he would provide details of the alleged beatings and torture when he had several occasions to do so before. You will recall that when PS Pudaruth from the Police Complaints Investigation Bureau went to record a statement from him at Beau Bassin Prison, he did not deem it fit to seize this opportunity but instead told PS Pudaruth that: "**Mo avocat fine dire moi pas bixin donne aucaine l'enquete et mo pas pou signe aucaine l'enquete.**"

Members of the Jury, Accused No.1 would have several other opportunities to sustain his allegations but he never did so until he came and testified before you. The only reasonable inference that can be drawn from this would be that Accused No.1 was never really serious about his allegations and there was in fact

never any complaint to make. On the other hand it would appear that he has used that time to perfect, in vain, his concocted story.

Members of the Jury, let us think as reasonable men and women about the allegations of police brutality and torture by Accused No.1. It took him 2 and a half days to relate before us how he had been beaten and tortured. He had been slapped, kicked, punched and handcuffed. Even his private parts had been squeezed. His heels had been hit several times with a “raccord robinet”. One of the slaps he received was apparently so hard that his left ear became “engourdi”.

Yet, Members of the Jury, the medical evidence called on his behalf goes completely contrary to his allegations in court. We heard from 3 doctors in that respect: one from SSR National Hospital, the other from ENT Hospital in Vacoas and Dr Gungadin, the Chief Police Medical Officer. The evidence from the 3 doctors confirmed that the allegations of police brutality were totally unfounded. The doctor from SSR National Hospital, you will recall, produced a copy of the Casualty Card relating to the examination of Accused No.1 on 12 January 2011 at SSR National Hospital. She told us that according to the Casualty Card there were no signs of external injuries on Accused No.1 and that there was no tenderness to his abdomen. You will remember that Accused No.1 had lamely told us that he

never took off his shirt when he was examined by the doctor at SSR National Hospital and the doctor did not even talk to him and simply prescribed him with medicines. Members of the Jury, to conclude that Accused No.1 had no tenderness to his abdomen, how would the doctor must have examined him with his shirt off.

The doctor from ENT Hospital who was the doctor who examined Accused No.1 at ENT on 17 January 2011 told us that he could tell us that there was no history of trauma to his left ear because he had specifically asked Accused No.1 if he had sustained injuries and the latter had told him no. Moreover, according to the doctor, the small perforation in his left ear was due to an infection for which he had prescribed antibiotics. What is worse is that not only did Accused No.1 tell the doctor that he had sustained no injuries but he also told the doctor that his was feeling discomfort in his left ear only from the day before. And we all know that he alleged having received that famous slap on 12 January 2011.

Like the other doctors, Dr Gungadin who examined Accused No.1 on 14 January 2011 never found any signs of external injuries on him and he also told us that Accused No.1 never complained to him about police brutality.

Members of the Jury, the evidence of these 3 doctors are telling, to say the least. Only on the evidence of these 3 doctors you should be able to discard the whole evidence of Accused No.1 as being a tissue of lies. But we have more, Members of the Jury. We have the sworn and tested evidence of Raj Theekoy. I will deal with the evidence of Raj Theekoy when I deal with our case against Accused No.2, which I shall now do.

CASE AGAINST ACCUSED NO.2

Accused No.2, Members of the Jury, came to court with his Certificates from the hotel to make you believe that he was a person of good character and a model employee. Yet he did not hesitate to break hotel regulations and send a room attendant to clean a room which had a DND sign on the door. You will also recall that out of 48 rooms in the Deluxe Section, he would only have checked 4 rooms and according to his own Head of Housekeeping, Mr Jeerasoo, there had been complaints against him in the past from clients being unsatisfied with the way their rooms had been cleaned and which rooms he should have supervised correctly.

Accused No.2 is also a person who went to the United Kingdom in 1999 with a tourist visa of 6 months and overstayed his visa for 5 years! He did not

overstay by one month, one year but by 5 years! 5 years, Members of the Jury! He would not accept that he was living there illegally but would instead describe his illegal situation as a banal “overstay”.

Here was a man who did not know the surname of his first employer, Abdool, and to whom he would candidly remit a passport photograph and the same photograph would, almost by magic, later appear on a fake French ID Card. That fake ID was shown to you, Members of the Jury. And he would also have us believe that he managed to obtain employment at the Thistle Hotel in Lancaster Gate by using his Mauritian Passport with an expired visa.

Accused No.2 was also a man who was willing to give a little helping hand to his Co-Accused No.1. He would tell us that while he was in the MCIT Office he heard shouts like: **“Ayo Ma! Pas batte moi!”**, when Accused No.1 would be in another room somewhere. A **“retour de l’ascenseur”** (return of favour) perhaps for the one who conveniently remembered, for the first time in 18 months, that his Co-Accused No.2 was on the phone near room 1009 at the material time on the day of the murder?

Accused No.2 came before you and told you for the very first time 18 months after his arrest that at the time of the killing he was on his mobile phone

to his sister who lives in Goodlands. More precisely, he told us that he made that call at around 14.45pm and the purpose of the call was to enquire generally about his sister and her family and the call lasted around 4 to 5 minutes. He even spoke of asking her what she was cooking and “roti” seems to have been on the menu. He also told us that he made that call while he was in the vicinity of room 1009. It was therefore the contention of the Defence for Accused No.2 that the latter could not have participated in the murder of Michaela McAreavy.

Members of the Jury, Accused No.2 has given 6 statements to the Police (5 of which have been read and produced before you) and nowhere in these 6 statements does he ever state that he was on the phone at the material time.

Now, Members of the Jury, if Accused No.2 really had nothing to do with the murder of Michaela McAreavy, surely he would have imparted that information when he gave his first statement under warning on 15 January 2011. Or at least he could have done so in his other 4 statements given under warning? For 18 months Accused No.2 has kept quiet about this phone call. Even at the Preliminary Enquiry where Raj Theekoy gave testimony against him, he still did not talk about this phone call. Can we deduce from that, Members of the Jury, that this was a last desperate attempt by Accused No.2 to save himself?

Members of the Jury, the case for the State is not that Accused No.2 never made that phone call. Rather, our case is that when Accused No.2 made that call he was in room 1025.

Members of the Jury, it cannot be seriously disputed that the times given by the door readings of the hotel rooms in Legends Hotel do not reflect the real time. We know for example, from the evidence of Brice Lunot, that there is a 6 minute gap between the times given by the door readings and the time on the CCTV. We also know from his evidence that the time given by the door reading of one hotel room would not necessarily correspond with that of another hotel room and he explained that this was dependent on the battery of the door reading machine. Furthermore we know for a fact that the times given by the door readings do not unusually tally with the times found on the room report sheets of the room attendants (who use the time in their watches) except for one occasion where the time written by Accused No.1 when he went into room 1031 matched exactly the time of the door reading. This strangely, Members of the Jury, is also the room that Accused No.2 alleges having supervised in presence of Accused No.1 on the day of the murder.

Finally it cannot be seriously disputed that the time given by a door reading does not correspond with the real time. A very simple example would illustrate my point. The evidence shows that the bellboy opened the door to room 1025 at 3.26pm according to the door reading. The events that followed are not seriously in dispute. As soon as the bellboy opened the door, John McAreavy went into room 1025, saw Michaela senseless in the bathtub, removed her, placed her on the floor and opened the door and called for help. The bellboy went back to room 1025 and was told by John to go and look for help, which he did. We know that the bellboy had reached the boathouse when he met with Brice Lunot and when the latter was told about the problem in room 1025 they both rushed back to room 1025 using the corridor meeting Accused No.1 and No.2 in the process. The 2 Accused followed Brice Lunot to room 1025 and when they reached there, Accused No.2 himself told us that he observed Brice Lunot performing First Aid on Michaela, and then he went to use the phone in the room itself to call at Reception for a doctor. He was then told to leave the room. When he went outside he made a first call to Mr Jeerassoo to inform him what has happened in room 1025.

Now, Members of the Jury, we have it from the telephone billing that that call was made at 15.28.49hrs. It would, therefore, be a dead impossibility for the

time of the door reading of 3.26pm to be an accurate time or to even correspond to the real time because it would mean that only 2 minutes and 49 seconds would have elapsed between the bellboy opening door 1025 and all the events that followed thereafter until Accused No.2 made the first call to Mr Jeerassoo.

On the other hand, Members of the Jury, we can safely consider the time from the Mauritius Telecom Server to be the best you can get from the real time. In that connection you will recall the evidence of the representative of the Mauritius Telecom who came to produce on behalf of Accused No.2 the telephones billings of the mobile phones used by himself and Raj Theekoy on the day of the murder. I cross examined him on this issue and he agreed that the time of Mauritius Telecom was the best you could get to the real time. This evidence is beyond dispute.

Now, the call made by Accused No.2 was at 14.45.20hrs and the call lasted for 258 seconds, that is, 4 minutes and 18 seconds. Whereas the call made by Raj Theekoy was at 14.47.53hrs and lasted for 83 seconds, that is 1 minute and 23 seconds. It cannot be disputed that these times are established beyond reasonable doubt as being the best we can get from the real time.

Members of the Jury, it now becomes crucial for me to consider the sworn and tested evidence of Raj Theekoy.

Mr Raj Theekoy told us that on the day of the murder when he finished cleaning room 1011, and this would have been at around 14.40pm, he put his trolley in order, removed the dirty linen, put all waste in a plastic bag, then he went to leave his broom and other equipment in the pantry which is found in room 1017.

After that, he went to see Accused No.1 at room 1025 to see if the latter had finished cleaning room 1025. He says that he arrived near room 1025 at around 14.45hrs. When he arrived there, he saw that the door to room 1025 was closed shut but the trolley of Accused No.1 was outside in front of room 1025. He was sure that it was Accused No.1's trolley because it had the name of the latter on it. All the 4 tyres of the trolley were in good condition and there was dirty linen and waste on the trolley. When he was about to turn around to go back, he heard the voice of a lady coming from inside room 1025 and when I asked him: "**ki li ti p faire**", he told us: "**ti p crier dans souffrance.**" When I further asked him to describe the cry, he went: "**Aah!**" and he told us that he heard this scream 3

times. He was dead sure that he heard the voice of a lady in room 1025 screaming “Aah, Aah, Aah!”.

Members of the Jury, when I asked Raj Theekoy: “**ki ou fine penser kan ou fine tane sa**”, his reply was: “**Sa lere la mone peur. Lerla mone penser capav madame missié p gagne ene problem**”.

Then Raj Theekoy told us that he went near room 1021, the words he used were: “**lerla mone al kot 1021**”. Members of the Jury, at no point in time, did Raj Theekoy say that he was standing beside or close to the door of 1021. I have looked again and again at the proceedings and nowhere did he state that he was standing close to or beside the door of 1021. What he says is that he went “**kot 1021.**”

Raj Theekoy told us that the reason why he went near room 1021 was: “**pou mo gueter ki sanla ki pou sorti dan lasam la**”, meaning to see who would come out of room 1025.

In cross examination it was put to Mr Theekoy that the client of room 1021 accessed the door of that room at 14.46hrs and he should have seen that. Members of the Jury, I have already explained to you that the time of the door reading and the real time do not correspond so that it can be that Mr Theekoy

was not near room 1021 when the client went into that room. So it is not surprising when Mr Theekoy candidly stated that he did not see the client going into room 1021.

Members of the Jury, Mr Theekoy honestly told us that from where he was at room 1021 he would not be able to see the door of room 1025 because of the L shape from where he is to the door of 1025. Members of the Jury, having been on the locus, you know what I am talking about.

Raj Theekoy also told us that he stood near room 1021 for about five to six minutes. He also accepted that during those five minutes, he made a call to his wife to enquire about his child's first day at school because in the morning the latter did not want to go to school and was being naughty. We know that that call was made at 14.47.53hrs and the call only lasted 1 minute 23 seconds.

Then, Raj Theekoy told us that whilst he was near room 1021 for the five to six minutes, but definitely after he had made the call to his wife, he saw Accused No.1 coming from the direction of room 1025 and when I asked him: "**couma ou capav dire ki accuse no.1 ti p sorti dans lasam 1025**", his reply was: "**kot moi mo ti debouter la mo trouve so lazou cote droite**." Then he told us that after seeing Accused No.1 coming from the direction of room 1025 he also saw Accused No.2

coming from the same direction i.e. room 1025. Again he saw the right profile of Accused no.2.

Mr Theekoy said that Accused No.1 was “**impé tracasser**”. The words used were: “**lere tracasser, line vire so figure mone trouve li bien ... figure ti impe tremper.**” When I asked him: “**Sandip couma ti eter li**”, he said “**li aussi li ti tracasser.**”

When I asked him whether both Accused saw him, he said no. He told us that both Accused remained there (“**zot ti labas meme**”), then Accused No.2 “**ine vire par derriere line aller**” whereas Accused No.1 was still there when Raj Theekoy left to go to room 1011 where he had left his trolley.

You will also remember, Members of the Jury, that Raj Theekoy also told us that Accused No.1 wiped his face with his hand when he came from the direction of room 1025. The words he used were: “**line souye so figure avec so la main.**”

Raj Theekoy then told us that while he was near room 1011 Accused No.1 came there 10 minutes later with his trolley. Raj Theekoy asked Accused No.1 what happened in room 1025, Accused no.1 told him: “**pane arrive narien.**”

Accused No.1 then told Raj Theekoy that he was going to inflate one of the tyres of his trolley although Raj Theekoy maintained that all the 4 tyres of Accused No.1's trolley were in good condition. Around 3 minutes after Accused No.1 had left to go to the boathouse Accused no.2 came near room 1011 where Raj Theekoy was. Accused No.1 then came back to near room 1011 but this time without his trolley. Accused No.2 was still there. Both Accused then went in a corner, according to Theekoy's words: "**lerla zot fine alle dan ene coin, zot fine coser mais mo pane tane bien sa ki zot ine coser.**" When I asked him: "**couma zot ti paraitre**", his reply was: "**tracassé**".

Members of the Jury, then we know what happened. While they were still there near room 1011, they saw Mr Brice Lunot and other hotel staff running in the direction of room 1025. Accused No.2 then told Raj Theekoy: "**mo croire ine arrive ene problem devant nu al guetter.**" All three of them followed Mr Brice Lunot to room 1025.

Mr Raj Theekoy would never enter room 1025 but watched from outside. He saw Mr John James McAreavey who was crying and was saying: "**please save my wife.**" Raj Theekoy and the 2 Accused would then go at the back of room 1025. His words were: "**derriere l'hotel**". And when I asked him: "**lere ou fine**

arrive derriere l'hotel ou, Sandip avec Avinash kine arriver?" He replied : "mone vine par derriere dans gazon mo pose Avinash question 'talere la mone dimane toi kine arriver dan lasam 1025 tone fine dire moi pane arrive narien 'beh sa ki eter sa?'" He told us that Accused No.1 did not reply but it was Accused No.2 who instead replied to him. This is what Raj Theekoy told us: "**li pas repone moi narien, Accuser no.2 repone li dire moi 'si ou pu ouvert ou la bouche mo pu risse toi case la".**

Raj Theekoy also told us that he understood these words to mean that both Accused had killed Michaela. His words were : "**lerla meme mone fini sire ki bane la meme, sa deux la meme, kine bisin faire sa travaye la.**" And by « travaye la » he meant « **touye madame la.** »

Members of the Jury, it is my contention that Mr Raj Theekoy is a witness of truth capable of belief. I have no doubt that you, Members of the Jury, will come to the same conclusion. Did he look like someone who had come before you to mislead you ? His testimony was straight forward and he withstood the gruelling test of cross examination. There may have been minor inconsistencies in his testimony, which may not be unusual when a witness gives evidence after a lapse of time. But you will agree that these minor inconsistencies do not in

anyway undermine his overall account of what he saw and heard at the material times on the day of the murder. Moreover, Raj Theekoy had no motive to lie. He has never had any trouble with either of the 2 Accused and this is even confirmed by them.

Much is being made of the fact that he has been given Immunity by the Learned Director of Public Prosecutions. Let me tell you right away, Members of the Jury, that there is nothing synical about this fact and this is a practice that prevails in all modern democracies such as ours. Members of the Jury, you will recall that Mr Theekoy gave his statement implicating both Accused in the murder on 12 January 2011. The Immunity was granted to him on 24 March 2011 so that he could testify before a court of law freely and without fear of impending prosecution against him. Let me also tell you that Mr Theekoy could have been liable to be prosecuted for the offence of Culpable Ommission in breach of Section 39A of the Criminal Code for having failed to provide assistance to a person in danger. I am sure my Learned Friend Rama Valayden will agree with me on this because he was the very person who, as Attorney General in 2006, introduced that piece of legislation in Parliament. Members of the Jury, you will also note from the letter granting him Immunity (which is before you) that the Immunity is granted to him on the condition that he speaks the truth at all times

and that the Immunity can be waived should he fail to fulfill any of the conditions attached to the Immunity.

Now, Members of the Jury, if you accept the evidence of Raj Theekoy, as we think you should, as being a true account of what he saw and heard at the material times on the day of the murder, then you will have no difficulty in accepting that while he was standing near room 1021 he made the call of 14.47.53hrs to his wife. If you accept this then you also have to accept that it was after that call was made that he saw both Accused coming from the direction of room 1025. That being so, it can only mean that Accused No.2 made the call of 14.45.20hrs when he was inside room 1025.

We have therefore proved beyond reasonable doubt that Accused No.2 was inside room 1025 at the material time on the day of the murder. And if we accept the confession of Accused No.1 as being true then we must accept that the participation of Accused No.1 in the murder of Michaela was limited to him holding her legs.

We also know for sure from the evidence of Dr Gungadin that Michaela died as a result of Asphyxia following compression of the neck. Therefore the only

irresistible conclusion is that it was Accused No.2 who was applying pressure to the neck of Michaela.

You cannot, Members of the Jury, avoid coming to this irrefutable conclusion. I am even tempted to say that Accused No.2 is, to use the words of my Learned Friend Rama Valayden, like the guilty child with a lot of Boundi across his face !

Members of the Jury, it is also the case for the State that Accused No.2 made the call of 14.45.20hrs while he was in room 1025 but after having committed the murder.

The evidence of Dr Gungadin shows that pressure had been applied to the neck of Michaela for a very short lapse of time, i.e. for only about 1 to 2 minutes. It is clear therefore that Michaela died very shortly after entering room 1025. Accused No.2 therefore had ample to make the call after killing her.

Members of the Jury, Accused No.2 stated that he called his sister to enquire generally about her family and in the process even asked about what she was cooking. Members of the Jury, we have proved to you beyond reasonable doubt that Accused No.2 was in room 1025 when he made that call and it was after murdering Michaela that he made that call. It is obvious then that he could

not have made that call simply to enquire about family affairs. After the murder he called the closest person to him. The sister who raised him. The sister who he turns to whenever he is in need, for when he needed a place to live when he got the job at Legends Hotel. It is no surprise then that he called his sister after the murder. But he certainly did not talk about what was on the Menu !

Members of the Jury, you will also remember the evidence of Ravindradeo Seetohul who told us that he saw Accused No.2 at around 2.25pm in the vicinity of rooms 1021 and 1023 going in the direction of room 1025 when Accused No.1 was still cleaning room 1025.

His evidence, Members of the Jury, must now be viewed along with the undisputed evidence that Accused No.2 entered room 1020 at, according to the door reading at 2.28pm. Since we have established that the time of the door reading is not the same as the real time, then it is clear that Accused No.2 did not in fact enter room 1020 at 2.28pm but earlier. Therefore when Ravindradeo Seetohul says he saw Accused No.2 at around 2.25pm it can only be true. In the same vein, the evidence of witnesses Pertaub also known as Bayo and Mooten must be viewed with circumspect. They had been mere « témoins de

complaisance » just like the sister of Accused No.2 who came to save a brother in need !

Accused No.2 also told us that he was in or around room 1009 when he made the call of 14.45.20hrs and he also gave as alibi one Govinden Saminaden. Members of the Jury, when the State brings a witness before you it does so on the basis of the statements that he gives to the Police. Therefore one would expect that when the State calls a witness, that witness will come and give a faithful account of what he had told in his statement to the Police. But I was myself surprised when Govinden Saminaden deliberately attempted to sabotage the case for the State by staging a well rehearsed drama in court and falsely accused the Police of having manhandled him. On that score you have the evidence PC Manoovaloo who recorded his statement and who clearly rejected any suggestion of manhandling Govinden Saminaden. Ironically, Members of the Jury, Govinden Saminaden never stated that Accused No.2 was on the phone while he was in his company at or around room 1009.

A lot has also been said about the fact that when the double lock is on the use of a magnetic key card would not appear on the door reading. Members of the Jury, this is neither here nor there. It is clear that the GMK5 Supervisor 2 key

card could have been used by either of the 2 Accused with the clear intention of not leaving a trace when stealing in rooms, otherwise the last door reading of 14.12hrs when Accused No.1 entered room 1025 to clean would have been the last door reading prior to the bellboy opening the door at 3.26pm according to the door reading. And we also know that there was a time when Accused No.1 was in room 1023, so that if Accused No.2 was using the GMK5 Supervisor 2 card then, Accused No. 1 would clearly not have known about this and hence this is perhaps why he does not mention same in his confession.

Members of the Jury, in his opening address to you, my Learned Friend Sajiv Teeluckdharry spoke of the presence of the DNA of one Dassen Narayanan on the door handle of the wardrobe of the bathroom and yet he was not accused party along with the 2 Accused in the present matter.

Members of the Jury, ACP Soopun told us that Dassen Narayanan was never a suspect in the murder of Michaela McAreavy. The Police Enquiry only revealed that he had been involved in a large scale conspiracy to commit larceny in the hotel rooms of Legends Hotel.

Furthermore, Mrs Susan Woodroffe told us that little significance should be attached to the presence of the DNA of Dassen Narayanan on the locus. She told

us that since the DNA Profile of Dassen Narayanan shared similar characteristics with the DNA Profile of John James McAreavy and Michaela McAreavy, the DNA of Dassen Narayanan could have been there purely by chance.

Members of the Jury, let us not forget that this horrible murder happened in the room of a five star hotel in the afternoon between 2.30-3pm. At that time it is inconceivable that some stranger would have gained access to the hotel premises and committed the murder. And I do not think there has ever been any suggestion to that effect from the Defence. Therefore, it made sense that people from within the hotel itself committed the murder and the enquiry revealed just that. And now we have proved beyond reasonable that the 2 Accused, 2 former hotel staff of Legends Hotel committed this barbaric act.

This was a robbery that turned into a brutal murder. It would have been easier for the 2 Accused to beg for forgiveness from Michaela and to walk away. The worst that could happen would have been the loss of their jobs. But they decided to murder her. This showed that they both possessed killing instincts and have no respect for human life.

PREMEDITATION

Members of the Jury, there remains for me to tell you, in relation to the elements of the offence with which the 2 Accused stand charged, whether they premeditated the killing of Michaela McAreavy.

As I told you in my opening speech, Members of the Jury, premeditation connotes on the part of an accused party a state of mind in which he has been able to meditate, to think beforehand.

Before committing the offence, the accused must have thought in himself the nature of the act he was going to perpetrate, and fully realizing the enormity and seriousness of the act, nevertheless does it in cold blood.

You must be satisfied that there has been an interval of time during which the accused parties have been able to ponder, meditate and think about their act.

How long the interval should be depends on the circumstances but what is important is that the interval should be sufficient for the accused to have meditated and thought beforehand.

What is important for you to bear in mind, Members of the Jury, is that Premeditation can exist in a fraction of a second or it may take a longer time.

In relation to Accused No.1, Members of the Jury, you have his confession.

He told us in it that he killed Michaela because she had identified him and he did not want to be exposed. He also told us how he helped to put her in the bathtub with running water to get rid of all traces. There was therefore clear premeditation on the part of Accused No.1 to participate in the killing of Michaela. He had time to think, albeit within a short span of time, about what he wanted to do, and fully realising the enormity of his action, he nevertheless went ahead and participated in the killing of Michaela.

In relation to Accused No.2, Members of the Jury, it is my contention that you can infer premeditation from the following –

1. The body of Michaela was found in a bathtub with the tap water still running.
2. Michaela was strangulated before being placed in the bathtub.
3. The purpose of putting her in the bathtub was to remove traces, as water diminishes chances of finding DNA, according to witness Susan Woodroffe.

4. There was also an added intention to disguise the murder into an act of drowning or suicide.

All this, Members of the Jury, showed that there had been rational thinking and clear methodology which can only come from, and is compatible with, premeditation.

CO-AUTHORSHIP

I must also, Members of the Jury, draw your attention to the fact that the 2 Accused are charged jointly as co-authors in the murder of Michaela. It is the contention of the State that the 2 Accused have acted « de concert » and in furtherance of a common purpose, that is, to murder Michaela McAreavy. It does not matter that one Accused has merely held the legs of Michaela while the other one was the one who strangled her. In law they are co-authors and are equally guilty for the murder of Michaela.

CONCLUSION

Members of the Jury, to conclude, I feel that I am duty bound to say one or 2 things about the manner in which fingers had been constantly pointed during

the whole trial at the husband of the deceased, Mr John James McAreavy, in a most unbefitting manner.

Throughout the trial several unseaming and grotesque theories were canvassed. They included for example –

1. Erotic Asphyxiation, which at one point in time, had become the Crux of the Defence Case of Accused No.1.
2. There was also the issue with the Belt which was quickly put to rest by the evidence of Dr Gungadin who excluded any form of ligature stragulation.
3. Finally we had the infamous CCTV Footage which you, Members of the Jury, were made to view, and there the Defence wanted you to believe that the German Couple found in the video was in fact the McAreavy couple.

All the above theories were, fortunately for John and his family, short-lived and quickly abandoned one after the other. But it is very unfortunate that we had to come this as it should have been clear to one and all that these theories would never have reached very far and could only have been a source of confusion in

the mind of the Jury. If anything, they were very insulting to John and his family and to the memory of Michaela.

The person who suffered the most in all this, as if he had not suffered enough after the death of the love of his life, Michaela, was undoubtedly John James McAreavy.

He came all the way from Northern Ireland with his family to seek justice for the wrongful murder of his beloved wife. He gave evidence before you in a straightforward and poignant manner. He told us about the love of his life, Michaela, how they met, what a fairytale wedding they had, how they had bought a house together and were looking forward to move in there after their honeymoon. John also told us, Members of the Jury, that his life ended when her life ended.

Members of the Jury, there are no politics to truth ; there is right and there is wrong. I have no doubt whatsoever that when you consider the evidence, objectively and dispassionately, that you will reach the right decision that the 2 Accused are guilty as charged.

Thank you, Members of the Jury. Thank you for your time and attention.