

Pathip Selvan s/o Sugumaran v Public Prosecutor  
[2012] SGCA 44

**Case Number** : Criminal Appeal No 24 of 2010  
**Decision Date** : 15 August 2012  
**Tribunal/Court** : Court of Appeal  
**Coram** : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA  
**Counsel Name(s)** : Subhas Anandan and Sunil Sudheesan (KhattarWong LLP) for the appellant;  
David Khoo and Dennis Tan (Attorney-General's Chambers) for the respondent.  
**Parties** : Pathip Selvan s/o Sugumaran — Public Prosecutor

*Criminal Law*

[LawNet Editorial Note: The decision from which this appeal arose is reported at [\[2011\] 2 SLR 329.](#)]

15 August 2012

**V K Rajah JA (delivering the judgment of the court):**

**Introduction**

1 This is a tragic case of a young couple who had a bittersweet relationship that culminated in a homicide. The appellant, Pathip Selvan s/o Sugumaran (“the accused”), caused the death of Jeevitha d/o Panippan (“the deceased”) on 7 July 2008 by stabbing her repeatedly all over her body. The multiple injuries caused were sufficient in the ordinary course of nature to cause death. He now appeals against the decision of the trial judge (“the Judge”), who found him guilty of murder. The Judge rejected all the accused’s defences, found that he had committed an offence under s 300(c) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) and imposed the mandatory death penalty.

**Background**

***The parties***

2 The accused was 22 years old at the time of the offence. He has three siblings; an older brother, a younger brother and a younger sister. His parents were divorced when he was only five years old. After the divorce, the accused and his two brothers lived at the Sri Ramakrishna Mission Boys’ Home from 1992 to 1996. Thereafter, he lived with his maternal grandmother when he was young. He has lived at different points of time with his mother, stepfather and maternal grandparents during the past few years. [\[note: 1\]](#) After completing his “N” Levels he studied electrical engineering at the Institute of Technical Education, but dropped out from his course in his second year. He was then enlisted as a fireman in the Singapore Civil Defence Force and concluded his National Service (“NS”) in January 2007. Prior to his arrest, he was working for his uncle as a movement operator at WeiShen Trading & Services Co Ltd. [\[note: 2\]](#)

3 The deceased was 18 years old at the time of her death. She used to work as a kindergarten teacher. At the time of her demise, she was studying for her GCE “O” Levels as a private candidate. [\[note: 3\]](#)

## ***The relationship between the accused and the deceased***

4 The accused gave the following account of his relationship with the deceased. [\[note: 4\]](#) They met in November or December 2007 through Suresh, a mutual friend. According to the accused, she had up to 16 boyfriends at that time. [\[note: 5\]](#) They became friends but their relationship eventually grew closer. On 10 April 2008, the deceased met the accused's family members, and later the accused brought her to his sister's bedroom where they became intimate. This led the deceased to say in Tamil, "Now you have done everything to me, so you are my boyfriend. I hope you will not leave me." The accused replied "[y]a, obviously you are my girl". [\[note: 6\]](#) The accused's family, however, disapproved of their relationship. According to the accused's mother, the deceased would often ask for money from the accused and the accused's relationship with his family became strained because of this. [\[note: 7\]](#)

5 Their relationship hit a difficult patch in May 2008, when the deceased began to meet a male friend, one Kesh, frequently. The accused became suspicious about her relationship with Kesh and obtained Kesh's telephone number to call him and ascertain the nature of the relationship. Kesh, who said that the deceased had never told him about the accused, claimed that the deceased was interested in him although he already had a girlfriend. He stated that he kissed the deceased and fondled her at a void deck. Immediately after calling Kesh, the accused called the deceased and told her that he hoped that she did not hide anything from him. She replied that she had never hidden anything from him. The accused then told her that he had spoken with Kesh and asked her to meet him at the study corner at Blk 155 Ang Mo Kio, which was near her house. [\[note: 8\]](#)

6 When they met, the deceased immediately hugged him and started tearing. She admitted that she had lied about her relationship with Kesh and that they had kissed and fondled each other. She then promised him that she would refrain from having any further contact with Kesh. The accused then hugged and kissed her. He forgave her and told her that she was not to repeat the same conduct. [\[note: 9\]](#)

7 After they made up, the accused and the deceased met regularly and were often intimate. [\[note: 10\]](#) In May 2008, the accused wanted to take up a part-time course in Petroleum and Chemical Process Technology at ITE College East, but he deferred his application because the deceased wanted to retake her GCE "O" Level examination but lacked the financial means to do so. He obtained money purportedly for his own school fees from his grandmother and gave the money to the deceased for her examination fees. [\[note: 11\]](#)

8 On 25 May 2008, the accused and the deceased quarrelled over an incident, the details of which the former was unable to recollect. [\[note: 12\]](#) On 27 May 2008, the two quarrelled again as the deceased said that the accused only wanted her body and not her heart. [\[note: 13\]](#) On 28 May 2008, the deceased called the accused to inform him that she wanted to visit her sworn brother at Choa Chu Kang and that she did not have any money. The accused then decided to meet her. However, he knew that if he had said that he wanted to meet her, the deceased would not have agreed to this. [\[note: 14\]](#) Hence, he lied to her saying that he would transfer some money into his friend's account and that she could collect the money from his friend at Admiralty MRT station. He then went to Admiralty MRT station so that he could meet her. At the station, he saw her with her sworn brother, went up to her, grabbed her hand and told her sworn brother to leave. While the deceased was being pulled along, she made a call on her handphone claiming, "[h]ello, hello Police, my boyfriend just kidnapped me". The accused grabbed her handphone and cut off the line. He pulled her into a taxi and

went to his uncle's house. [\[note: 15\]](#)

9 After they alighted from the taxi and were walking towards the accused's uncle's house, the accused noticed that the deceased's handphone was ringing and that the caller was her ex-boyfriend, Uthiswaran s/o Hendry A ("Uthish"), who lived at Choa Chu Kang. He answered the call, put the phone to her ear and asked her to speak to Uthish. However, the deceased refused. The accused then asked her whether she was going to Choa Chu Kang to meet Uthish. The deceased cried and asked the accused to trust her. She said that if he did not trust her, he could call Uthish himself. [\[note: 16\]](#) The accused then called Uthish and said in Tamil, "[w]hy the fuck you call my girlfriend for". Uthish replied that he had called the deceased to find out her mother's handphone number. The accused told Uthish not to call the deceased anymore. He added that Uthish should call him first if the latter wanted anything from the deceased. [\[note: 17\]](#)

10 Subsequently, the accused and the deceased reconciled at the accused's uncle's house and became intimate. While they were having sex, the accused ejaculated into her vagina despite the latter's protests. The deceased cried and asked the accused whether he would really be responsible for the baby if she became pregnant. The accused said that he would. The deceased also asked the accused if he would eventually abandon her. The accused replied that if he had intended to abandon her, he would not have ejaculated thus and he had done so to show that he really loved her. [\[note: 18\]](#)

11 Later that day, the deceased made a police report that the accused had raped her. When the accused returned home that night, he saw police officers inside his house and decided not to enter his house in case they were looking for him. [\[note: 19\]](#) He called his friend, Kartigesan s/o Yanamani ("Kathik"), and asked him where the deceased was. Kathik informed him that the deceased had attempted to commit suicide. The accused decided not to return home until he found out what was going on. [\[note: 20\]](#)

12 Around two or three days later, the accused called his mother, who informed him that the deceased had reported to the police that he had raped her. [\[note: 21\]](#) The accused called Kathik a number of times to find out how the deceased was doing. On one occasion, Kathik passed his handphone to the deceased so that the accused could speak with her. When the accused asked the deceased why she had lodged a police report against him, she cried and said that she was confused and did not know why she had done so. The deceased then promised to withdraw the complaint. [\[note: 22\]](#)

13 Subsequently, the accused met the deceased's father, Panippan s/o Sinnappan ("Mr Panippan"), and told the latter that he wanted to marry her. Mr Pannipan asked him why he had suddenly decided to marry his daughter. The accused replied that the deceased was pregnant and had lodged a police report against him for raping her. Mr Pannipan responded saying that he would call the deceased and talk to her. [\[note: 23\]](#)

14 The next day, the accused had a phone conversation with the deceased, who was unhappy that he had seen her father without her. She told him to surrender himself to the Police. [\[note: 24\]](#) On the following day, the accused surrendered himself to the Police and was released on station bail. He was warned not to see or talk to the deceased until the case was concluded. [\[note: 25\]](#)

15 Around four days after the accused was released on bail, the deceased called him to find out

how he was doing and told him that she needed to go for an appointment on 30 June 2008 for a pregnancy test. [\[note: 26\]](#) They reconciled and started dating again. [\[note: 27\]](#) On 29 June 2008, the accused went clubbing with some friends. However, as he felt guilty about clubbing without her consent, he went to the deceased's home to apologise to her. [\[note: 28\]](#) On 5 July 2008, they went to Sentosa and spent the night in a tent, where they had sex. [\[note: 29\]](#)

### **Chain of events leading to the killing**

16 On 6 July 2008, the accused spoke to the deceased over the telephone and learnt from her that she had influenza and was coughing. [\[note: 30\]](#) The next day, he pretended to be sick so as to be able to take leave and take her to see a doctor. [\[note: 31\]](#) He went to the deceased's flat on the second floor of Block 157, Ang Mo Kio Avenue 5. Instead of entering her house, he decided to check if the deceased was still asleep. He took a chair, climbed onto it and looked into the deceased's bedroom from the common corridor. [\[note: 32\]](#) To his horror, the accused saw the deceased lying on her bed and kissing a man wearing a red tee shirt and long pants. [\[note: 33\]](#) He was shocked and very angry. He went to the main door, kicked it very hard, and shouted three times in Tamil, "[f]aster open the door". [\[note: 34\]](#) The deceased came to the door but refused to let him into her flat. He asked her if she was hiding anything from him, but she denied this, and said "why do you always have to suspect me?" She also told him that she would call him after her medical appointment at Kangar Kerbau Hospital at 3.40pm. [\[note: 35\]](#)

17 The accused waited at the staircase of the deceased's block of flats, hoping to meet her before she went for her medical appointment. However, he fell asleep while waiting. [\[note: 36\]](#) Subsequently, he learnt from the deceased's friend, Hemavathy d/o V Moganaval ("Hema") that the deceased and her mother would be returning to the flat in over an hour's time. [\[note: 37\]](#)

18 While waiting for the deceased to return, the accused called his friend, Balasubramaniam s/o Tangavelu ("Bala") to accompany him. He also decided to buy a knife to force the deceased to tell him the truth about the man in the red tee shirt. In his statement to the police dated 11 July 2008, he recounted: [\[note: 38\]](#)

63 I then decided to buy a knife. I wanted to use the knife to threaten Jeev. I knew that she would not tell me the truth if I did not threaten her with a knife. She is a better talker than me and she always has the final say.

64 ... When I wanted to pay for the knife, the auntie asked me why I wanted to buy the knife and I told her that my mother asked me to buy the knife.

...

66 I took out the knife from the new casing and threw the casing into a drain together with the plastic bag. I then tucked the knife at the back of my waist and covered it with my t-shirt. When I arrived at the void deck of Blk 181 Ang Mo Kio, I saw a lot of purple coloured flyers on the floor near to the letter boxes. I picked up two or three flyers. I then went up the staircase and took out the knife that I just bought. I rolled the flyers over the knife and folded one end of the flyers over the sharp end of the knife. I then tucked the knife with the flyer at my back and covered it with my shirt. I did this because while I was walking with the knife tucked at my back, I could feel the sharp part of the knife against my back.

19 After buying the knife, the accused bought a "Winnie the Pooh" correction pen for the deceased as he knew that she liked such items. [\[note: 39\]](#)

20 The accused then met up with Bala, Bala's girlfriend and Viknesh s/o Rajandren ("Vicky") at a nearby coffeeshop and waited for the deceased. [\[note: 40\]](#) At around 8.00pm, he received a call from the deceased, who asked him to meet her at the void deck of Blk 155 Ang Mo Kio. He told his friends that he was going to meet the deceased and that he would return with her later. [\[note: 41\]](#)

21 The accused proceeded to Block 155 and met the deceased and her mother. According to the deceased's mother, the accused asked her for permission to marry the deceased. He promised to give the deceased a good life and said that he wanted to see the deceased's face every day. He disclosed that he used to be a gang member but had changed after meeting the deceased. He told her that he had started attending church every Saturday because of the deceased. After talking to the accused for a while, the deceased's mother left him and the deceased alone. [\[note: 42\]](#)

22 The events that followed are now set out in the accused's own words: [\[note: 43\]](#)

71 I then asked Jeev to go to Ang Mo Kio West Garden. As I had mentioned before, we used to go to Ang Mo Kio West Garden which is nearby. However, this time, I intend to ask her about the man who was with her this morning. To go to Ang Mo Kio West Garden, we have to walk to Blk 154 Ang Mo Kio, before taking the staircase to the Ang Mo Kio West Garden. While we were at the void deck of Blk 154 Ang Mo Kio, I saw the bushes around the power station in front of Blk 154 Ang Mo Kio. I knew that at that time there will be a lot of people at Ang Mo Kio West Garden and when I saw the bushes behind the power station, I thought that it is a better place to ask Jeev about the man. I knew that if I were to threaten Jeev with the knife that I bought, people at the Ang Mo Kio West Garden could see me but behind the bushes, no one could see clearly because the bushes are quite high and thick.

72 Immediately I told her that I wanted to talk to her. She asked me (*sic*) that we are going up to the garden. I just replied no and I wanted to talk to her and pulled her to the back of the power station behind the bushes.

73 While we were behind the power station, she was standing near to the wall of the power station and I was standing facing her with the bushes behind me. I asked her in English saying "You are not hiding anything from me right?". She replied "No". I asked her again in English "You are not lying to me anything?". She replied "No". I just shouted at her in Tamil "Who the fuck was the man in the red shirt in bed with you this morning?". She was stunned. On seeing her reaction, she knew then that I know what she had done. I cried and asked her in Tamil "Why, why, what did I not do for you, I really can't understand, tell me?". She replied in Tamil "*he is better than you in bed that is why I am after him*". At this juncture, I took out the knife from behind me with my right hand and stabbed her on her stomach. The moment I stabbed her, she was holding my hands with both her hands. When I pulled the knife out from her body, I felt she scratched my right hand. I continued to use the knife to stab Jeev several times. I could not remember where I had stabbed her or which part of her body that I stabbed her. All this while, Jeev was holding on to the lower part of my left hand just above my wrist with her right hand and kept on shouting in English "I love you, I love you." I stopped stabbing her when she released her grip on my right hand. When she let go of my left hand, I realised that Jeev was already lying on the ground. Her legs were nearer to Blk 154 and I was bending down looking at her.

74 I saw that she was bleeding from the left side of her neck. I squat down and kissed her

right cheek and I removed the gold chain which I had bought for her as a gift. As far as both of us are concerned, it is a sacred matrimonial chain which I had bought for her as a symbol that she is my wife. I just threw it at the side. I could not remember where exactly I threw it.

75 I got scared and walked out of the area very quickly. ...

23 The accused testified that when he heard the deceased's remark ridiculing him he had "*never been this sad*" and became "*very, very angry*". [emphasis added] [\[note: 44\]](#) After stabbing the deceased, the accused walked away from the scene. As he left the scene, he picked up some brochures on the floor of the void deck of Blk 154 Ang Mo Kio to wrap the knife. He then boarded a taxi and headed for Woodlands. Along the way, he got out of the taxi and threw the knife into a drain. [\[note: 45\]](#)

24 The accused telephoned his mother and told her that he wanted to do some shopping in Malaysia. He asked her to bring him a pair of jeans and a tee shirt. After meeting his mother, the accused put on the clothes that his mother had brought and both of them went by taxi to the Woodlands Checkpoint, where he applied for and obtained a Document of Identity, which enabled him to enter Malaysia. [\[note: 46\]](#) While they were both in Johor Bahru, he left his mother alone at a restaurant, and took a taxi to Danga Bay and spent the night there. His mother eventually returned to Singapore alone. The next afternoon, he made a telephone call to his home and told his mother and other members of his family to take care of themselves and that they would not be hearing from him again because he was going to die. [\[note: 47\]](#) His mother told him to return home because the police, who were at the house, would take her to the police station if he did not return. [\[note: 48\]](#) On hearing that, he asked her to pass the phone to the police officer, and told the latter not to do anything to his family as he would immediately surrender himself. [\[note: 49\]](#)

25 The accused then went to the Woodlands Checkpoint and surrendered himself to Inspector Mohamad Raffi bin Mohamad of the Immigration and Checkpoints Authority. He said to the latter, "Sir, yesterday I wanted to run away. *I killed my girlfriend because of jealousy.*" [\[note: 50\]](#) In his cautioned statement recorded on 9 July 2008, [\[note: 51\]](#) the day after his arrest, the accused stated in response to a charge of murdering the deceased:

That day morning, I went to her house in Ang Mo Kio. I did not go to work. I took a chair from a neighbour and placed it in front [*sic*] of her corridor window. I got up the chair and looked inside. I saw her kissing someone on the bed. I got down the chair and kicked her house door. I asked her whether I could come in. She told me not to. I then told her that it was not the first time I went to her place. She told me "Not today. I am not in the mood". On the same night, I confronted her about the guy in her house. But she did not want to talk about it. I asked her about the guy in the red shirt. She was stunned when I asked her about this. I asked her what she found in him did not find in me. *She said that he is better in bed than me.* That's why I took out a knife and stabbed her in her stomach. After that, I closed my eyes and blindly stabbed her a lot of times until she released her hands from mine. Before leaving the place, I kissed her on the right cheek and then pulled the chain on her neck which I had bought her. That's all.

## **The post-mortem**

26 Dr George Paul ("Dr Paul"), a Consultant Forensic Pathologist, undertook a post mortem examination of the deceased. In his autopsy report, [\[note: 52\]](#) he listed 15 external injuries including bruises, abrasions, and eight stab wounds (of which three were fatal, namely an incised gaping

larynx-deep wound (injury no 1), an oblique incised stab wound on the lower part of the left shoulder extending inwards and downwards to the upper outer part of the left side chest (injury no 14), and an oblique incised stab wound in the middle front and outer aspect of left side of the chest (injury no 15)). The other stab wounds were spread out in various regions of the deceased's body, including her neck, elbow, chest, lower back, and abdomen. The deceased had bruises on her thumbs and abrasions on her thigh, forearm, elbows and chest.

27 Dr Paul testified that the three fatal wounds were directed wounds, in that they were inflicted with the *intent to wound*, and were *not accidental injuries*. [\[note: 53\]](#) Injury no 1 was inflicted with "quite a bit of force" and injuries nos 14 and 15 were "very forceful injuries" [\[note: 54\]](#).

### **The case below**

28 The accused admitted to killing the deceased and was charged under s 300(c) of the Penal Code. He relied on the partial defences of provocation in Exception 1 and diminished responsibility in Exception 7 of s 300 of the Penal Code. [\[note: 55\]](#)

29 With regard to provocation, the accused claimed that he was in a greatly agitated and vulnerable state of mind and the deceased's callous utterance that the other man was better than he in bed caused him to lose his self-control. The accused's counsel, Mr Subhas Anandan, contends that the provocation was grave and sudden such that a reasonable man sharing his characteristics would have reacted the same way. In relation to diminished responsibility, the accused relied on the evidence of Dr Tommy Tan ("Dr Tan"), a senior psychiatrist in private practice. Dr Tan said that the accused suffered from Attention Deficit Disorder/Hyperactivity Disorder ("ADHD") which was as an abnormality of mind induced by a disease of the mind. Dr Tan opined that this made the accused prone to rage outbursts, and that substantially impaired his mental responsibility for causing the deceased's death.

30 The Prosecution submitted that both the provocation and diminished responsibility defences were inapplicable. It submitted that the accused was deliberate in his attack and had not lost his self control. Furthermore, it contended that the alleged provocation was neither grave nor sudden. The Prosecution asserted that Dr Tan's opinion was not credible and relied instead on the psychiatric report of its psychiatrist, Dr Joshua Kua ("Dr Kua"), a consultant psychiatrist at the Institute of Mental Health, who found that the accused did not suffer from any abnormality of mind that substantially impaired his mental responsibility. As such, the Prosecution submitted that the accused should be convicted of murder, punishable under s 302 of the Penal Code.

### **The judge's decision**

31 The High Court judge ("the Judge"), who found the accused guilty of the s 300(c) charge, made the following findings of fact in his grounds of decision, *Public Prosecutor v Pathip Selvan s/o Sugumaran* [2010] SGHC 335 ("the GD"):

(a) the evidence showed that the accused never had any significant functional impairment. He made unremarkable progress through school and NS, and at the time of the offence he had a normal working life. Hence, the defence of diminished responsibility was not made out: at [32];

(b) the deceased's words had an impact on the accused. A reasonable person in the accused's position would be hurt by her words, but would not be so enraged that he would lose his power of self control: at [36]; and

(c) the accused did not lose his self control as a result of the provocation. While he told Dr Tan that his mind went blank, this was more than a year after the event. He had not said this in his previous statements to the police or in his interview with Dr Kua. In addition, his mental processes did not cease during the attack. While he closed his eyes, he felt the deceased holding onto his hands, he knew that he continued to wield the knife and that she scratched his right hand when he pulled the knife out of her body. He had heard her protestations of love for him. He remembered that he knelt to kiss the deceased, and that he decided to remove her necklace or “thali” which was a symbol of their relationship: at [38] and [39].

## **The appeal**

### ***Issues in the appeal***

32 The issues in this appeal are whether the accused can rely on the partial defences of provocation or diminished responsibility.

### ***The defence of provocation***

33 The Penal Code, as a concession to human frailty and weakness, recognises some partial defences to the offence of homicide. The partial defence of provocation, which reduces the offence committed from murder to culpable homicide not amounting to murder, is found in Exception 1 to s 300 of the Penal Code (“Exception 1”):

*Exception 1.*—Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

34 It is instructive when considering the partial defence of grave and sudden provocation to bear in mind the views of Lord Macaulay, the draftsman of the Indian Penal Code, on the need to mitigate the consequences of homicide committed in the sudden heat of passion on great provocation; see *Notes on the Indian Penal Code, The Works of Lord Macaulay; Speeches Poems & Miscellaneous Writings, Vol 1* (Longmans Green and Co, 1898) at p 120:

We agree with the great mass of mankind, and with the majority of jurists, ancient and modern, in thinking that homicide committed in the sudden heat of passion, on great provocation, ought to be punished ; but that in general it ought not to be punished so severely as murder. It ought to be punished in order to reach men to entertain a peculiar respect for human life ; it ought to be punished in order to give men a motive for accustoming themselves to govern their passions; and in some few cases for which we have made provision, we conceive that it ought to be punished with the utmost rigour.

*In general, however, we would not visit homicide committed in violent passion, which had been suddenly provoked, with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course,—a course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law.*

[emphasis added]

This partial defence recognises that individuals can in limited situations be emotionally overwhelmed and offend under conditions of extreme fear, sadness, depression or even jealousy. This is a difficult

area of the law that requires the courts to balance contemporary standards and the societal mores of the day with the need to deter violent conduct emanating from rage. It is now trite that there are two distinct requirements for the defence of provocation to apply (see *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 (“*Johari*”) at [101], citing *Seah Kok Meng v Public Prosecutor* [2001] 2 SLR(R) 24 at [21]). First, it must be shown that the accused was deprived of self-control by the provocation (“the subjective test”). Secondly, the provocation must be grave and sudden, and it has to be determined whether an ordinary person of the same sex and age as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked as to lose self control (“the objective test”).

### ***The subjective test***

35 To be able to rely on provocation as a partial defence, the accused must first show that he was in fact deprived of self-control by the provocation. The classic direction on what constitutes loss of self-control was given in *R v Duffy* [1949] 1 All ER 932 (“*Duffy*”) where the Court of Criminal Appeal approved of the following formulation by Devlin J in the court below as “impeccable” (at 932):

... sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his [*sic*] mind.

36 Where a killing is premeditated, the question of loss of self-control is, without more, quite irrelevant. *In the present case, there was absolutely no evidence that the killing was premeditated.* In this regard, it is noteworthy that at the hearing of the appeal, Deputy Public Prosecutor David Khoo (“Mr Khoo”) stated that the Prosecution’s case was not that the killing was premeditated [\[note: 56\]](#) but that the accused had brought the knife to the meeting in order to threaten the deceased and use the knife to hurt her if she did not give him a satisfactory answer. [\[note: 57\]](#) This is a significant concession. The accused, who had consistently maintained that he brought the knife to threaten and not to harm the deceased, had previously threatened her with a knife. He explained that in May 2008, when the deceased was staying over at the house of her friend, Kathik, he had threatened her with a knife so that she would not return home late. He testified: [\[note: 58\]](#)

A: If I do not confront her with a knife, she will talk and ... outsmart me. And if I confront her with the knife, she will tell the truth.

...

Q: And would I be ... correct in saying that ... your talking to her with a knife worked?

A: Yes, because she’s very afraid of the knife.

37 The accused’s evidence that the knife was only intended for threatening the deceased is credibly supported by the facts. To begin with, the accused had arranged to meet the deceased in a public place, which militates against the argument that he had planned to hurt the deceased with the knife. In addition, two of the accused’s friends, Vicky and Bala, testified confirming that the accused was supposed to return *with the deceased* to meet them after he had spoken to her. [\[note: 59\]](#) Crucially, prior to his meeting with the deceased, the accused had spoken to the deceased’s mother regarding his plan to marry her. According to the deceased’s mother, the accused spoke very softly and politely and promised to take good care of her daughter. [\[note: 60\]](#) *In our view, there was no reason to doubt that the accused passionately loved the deceased, and had arranged for the meeting to reconcile with rather than to harm, let alone kill, her.*

38 Having determined that the killing of the deceased was not premeditated, the next question which arises is whether the accused had experienced "sudden and temporary loss of self control" as a result of the provocation, which made him no longer a "master of [his] mind" (see [35] above). A close analysis of the accused's mental state during the killing is necessary to determine both why and whether he had lost self-control. In this context, it is plain that the Judge had erroneously found that the accused's claim about his "mind going blank" was only made to Dr Tan more than a year after the killing (GD at [39]). In fact, from the outset, in his statement to the police given soon after he surrendered dated 14 July 2008, the accused had stated that his mind went blank at the material time: [\[note: 61\]](#)

After the first stab, I closed my eyes and I started to swing and stab her several times. I do not know how many times I did this. I could not remember clearly what I had done. *My mind went blank at that moment.* [emphasis added]

39 In the same statement, the accused said that when the deceased's friend, Hema, asked him why he had killed the deceased, he replied "I do not know myself. My mind went blank." [\[note: 62\]](#) Thus, it appears that the accused's claim that his mind went blank was not, as the Prosecution initially submitted, and the Judge found, an afterthought. Although the accused explained that "what was going through my mind at that time were images of [the deceased] in bed with another man and the other things she had done to me previously", [\[note: 63\]](#) this does not preclude him from relying on the partial defence of provocation. There is no need for his mind to be completely blank or for there to be automatism when the deceased was stabbed to establish this partial defence. In this regard, the Judge correctly determined that the accused's mental processes did not cease during the killing (GD at [39]):

When all his statements are examined, it is clear that his mental processes did not cease during the attack. While he had closed his eyes, he felt that the deceased was holding onto his hands, *he knew that he continued to wield the knife and that she scratched his right hand when he pulled the knife out of [her] body. He heard her protestations of love for him.* He remembered that he knelt to kiss the deceased, and that he decided to remove her necklace or "thali", which was a symbol of their relationship.

However, while the accused appeared at some level of consciousness to be aware of what was happening during the killing, this did not, without more, mean that he did not lose self-control. The human mind has several levels and streams of consciousness.

40 The crucial question is whether the accused had suddenly lost self-control at the material time, *ie*, when he wildly stabbed her (see [26] and [42]) due to the perceived provocation to the extent that he was *no longer in control of his mind*. In our view, the facts strongly suggested that this was the case. The accused had been deeply in love and obsessed with the deceased. Despite a tumultuous relationship that included severe bouts of distrust and recurring episodes of intense jealousy, they invariably reconciled. We accept that the accused had intensely passionate feelings for her. As mentioned earlier, he had again expected to reconcile with her after talking to her despite the distress he felt about the latest perceived indiscretion. He had expected her to beg for his forgiveness as she had done on a previous occasion when he confronted her about her infidelity (see [6]). However, unfortunately, events did not unfold the way the accused had hoped. The deceased was not only unrepentant, but also uttered the taunting remark that the man in the red tee shirt was a better lover than he. Against the backdrop of the prevailing unhappy circumstances, it is plausible that this remark then immediately precipitated the loss of his self-control. It should not be overlooked

that the accused was already crying when the taunt was uttered. This heightened emotional state probably made him even more emotional and vulnerable to loss of self-control. [\[note: 64\]](#)

41 The fact that multiple injuries were inflicted in an *entirely random and frenzied* manner all over the deceased's body also suggests that the accused had suddenly lost self-control. As mentioned earlier (see [26] above), there were 15 external injuries over various parts of her body. In his statement to the police dated 14 July 2008, the accused stated thus: [\[note: 65\]](#)

After the first stab, I closed my eyes and I started to swing and stab her several times. I do not know how many times I did this. I could not remember clearly what I had done. My mind went blank at that moment. At times, I could feel that the knife I was holding hit onto something but at times, I felt that I was swinging my hand in the air. [emphasis added]

42 Much had been made of the accused's meticulous post-killing conduct. The Judge stated that the accused should have been very alarmed and concerned when he saw the deceased lying on the ground bleeding if his mind really "went blank" (GD at [22]). However, the approach adopted in *Public Prosecutor v Sundarti Supriyanto* [2004] 4 SLR(R) 622 at [154], quite correctly indicates that whether post-killing conduct can be taken into account depends on the facts of each case. The conduct of different individuals after they recover their composure (partially or completely) after momentarily losing it can vary infinitely and is contingent upon the existence of incalculable imponderables. It would not be correct to place undue weight on conduct after the offending act in a case such as this. Admittedly, the accused's actions indicate that he had regained at least part of his composure. After the deceased had fallen unconscious to the ground, he bent down to kiss her once on her cheek and pulled a gold chain, which he had given to the deceased as a symbol of marriage, off her neck as he felt she did not deserve it. [\[note: 66\]](#) However, this does not decisively indicate that he had not been deprived of self-control when he had earlier suddenly in a frenzied manner randomly stabbed the deceased all over her body. Rather, the history of their turbulent relationship indicated that he appeared prone to lose self-control very easily and regain it just as quickly. In response to a query from us, the Prosecution stated that it was not in a position to dispute this view of the accused. [\[note: 67\]](#) It would be recalled that earlier that fateful day, upon seeing the deceased behaving intimately with the man in the red tee shirt, the accused went to the front door of the deceased's house and impulsively kicked it very hard. Nonetheless, he was able to quickly regain his composure and asked the deceased to let him enter the house. [\[note: 68\]](#) In our view, the circumstances pointed to the conclusion that the accused had likely lost self-control as a result of the provocation and that he committed a crime of passion in the heat of the moment.

### **The objective test**

43 To satisfy the objective test, the accused must establish on a balance of probabilities (*Vijayan v Public Prosecutor* [1974-1976] SLR(R) 373 at [31]) that an ordinary person of the same sex and age as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked as to suddenly lose his self control.

44 There has been some controversy regarding the nature and application of the objective test. While the provocation must of course be grave and sudden, there is no settled definition of the terms "grave and sudden" in the Penal Code. In *Public Prosecution v Kwan Cin Cheng* [1998] 1 SLR(R) 434 ("*Kwan Cin Cheng*"), this court held (at [72]) that what constitutes grave and sudden provocation will depend on the facts of each case. Bearing in mind that the Penal Code is derived from the Indian Penal Code, Indian authorities continue to be useful to Singapore court in assessing whether a particular provocation is grave and sudden.

45 As for what is "sudden", a leading treatise, *Dr Sri Hari Singh Gour's Penal Law of India*, vol 3 (Law Publishers (India) Pvt Ltd, 11th Ed Revised, 2011) ("*Gour*"), declares as follows (at p 2498):

When it is said that the provocation must be "sudden" it is implied that it should have all immediately preceded the homicide in point of time. *A person may by repeated or continuous provocation arouse another to a state of mind when the provocation immediately preceding the act is only the last straw.* [emphasis added]

46 What amounts to "sudden" provocation was elaborated on in *K M Nanavati v State of Maharashtra* AIR 1962 SC 605 ("*Nanavati*") by the Indian Supreme Court, which stated (at 630):

The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In *Mahmood v State* AIR 1961 ALL 538, Oak J had perceptively noted (at 538–539):

Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. *Firstly, the provocation must be unexpected.* If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. *Secondly, the interval between the provocation and the homicide should be brief.* If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation. [emphasis added]

47 We note that the Judge had not made any specific finding on the absence of a sudden provocation. However, in our view, the present case, the requirement of a "sudden" provocation had been met. As mentioned earlier, the accused had fully expected to reconcile with the deceased and cement their relationship through marriage. The fact that he earnestly disclosed to the deceased's mother shortly before the incident his intention to marry her, as well as informed his friends that he was proceeding to meet the deceased and would later join them with her, are significant considerations that militate against premeditation. We pause to note that Mr Khoo acknowledged in the course of argument that the accused had created "a very good impression on the [deceased's] mother" and that the deceased's mother testified that she felt the accused was a "fine gentleman and ... she trusted him". [\[note: 69\]](#) *Further, the Prosecution did not question his evidence that he had believed that she would ask for forgiveness like she did on a previous occasion when she was confronted with her infidelity with Kesh.* Indeed, Kathik, a witness for the Prosecution, also confirmed that the accused had previously threatened the deceased similarly without any untoward consequences. [\[note: 70\]](#) *There was at most only a brief time interval between the provocation and killing as the accused stabbed the deceased immediately after her scornful taunt.* Evidently, the deceased's utterance about the accused's unsatisfactory sexual prowess was sudden and totally unexpected.

48 It is clear that both ocular and verbal conduct can constitute provocation. The more vexing question is whether the provocation was grave enough such that an ordinary person of the same sex and age as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked as to lose self control. Can words of this nature amount to a grave provocation? In determining what is grave, a number of authorities helpfully illuminate the position. In *Gour*, it is noted (at p 2498):

**Provocation must also be "grave".**—Not only must the provocation be sudden, but it must also be grave, and as remarked before, its gravity will be measured by the deprivation of self-control in which it must have resulted. Now, before a provocation can be said to be "grave", it must be one which the Court recognizes as sufficient to arouse a person's passions. It must, in fact, be a provocation which, though not intolerable, is sufficiently serious to explain the act. *From this, it, of course, follows that the feeling had an adequate cause.* This implies that the provocative act was either illegal, or one which, though legal, was improper. Where the act is neither the one nor the other, there is no legal cause justifying the provocation. [emphasis in bold in original, emphasis added in italics]

49 In *Dhanno Khan v State of UP* AIR 1957 ALL 317, the Allahabad High Court explained:

Each little provocation cannot be called grave simply because the consequences ensuing from that provocation at the hands of the accused have been grave. The provocation must be such as will upset not merely a hasty, hot-tempered and hyper-sensitive person but would upset also a person of ordinary sense and calmness.

50 Who is a reasonable man for the purposes of the objective test? The concept of a reasonable person losing self-control was not clearly articulated by the framers of the Penal Code. When the Indian courts first began applying the concept found in the English common law at the time, they realised that a purely objective test would be inoperable and would create injustice if applied to a multi-cultural, multi-religious, and multi-class structured society like the one in India: see *Nanavati* at [82] and Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, (LexisNexis, 2nd Ed, 2012) at [29.42]. In *Ithinin bin Kamari v Public Prosecutor* [1993] 1 SLR(R) 547 ("*Ithinin*"), this court held (at [38]–[39]):

38 We would take the opportunity to explain that, subject to what we say further below, the test is normally and primarily an objective one. As Lord Diplock in *Director of Public Prosecutions v Camplin* (1978) 67 Cr App R 14; [1978] AC 705; [1978] 2 All ER 168 ["*Camplin*"] said:

[The 'reasonable man'] means an ordinary person of either sex, not exceptionally excitable or pugnacious, but possessed of such powers of self-control as everyone is entitled to expect that his fellow citizens will exercise in society as it is today.

39 However, the characteristic of the accused may be a factor to be taken into consideration in a particular case. Lord Diplock in that case said:

**... the gravity of verbal provocation may well depend upon the particular characteristics or circumstances of the person to whom a taunt or insult is addressed** . To taunt a person because of his race, ***his physical infirmities*** or some shameful incident in his past may well be considered by the jury to be more offensive to the person addressed, however equable his temperament, if the facts on which the taunt is founded are true than it would be if they were not. *It would stultify much of the mitigation of the previous harshness of the common law in ruling out verbal provocation as capable of reducing murder to manslaughter if the jury could not take into consideration all those factors which in their opinion would affect the gravity of taunts or insults when applied to the person to whom they are addressed.*

[emphasis added in bold and italics]

51 It seems obvious to us that the conduct of the accused must be assessed by reference to the

reasonable person with a broadly similar background rather than some imaginary individual travelling on some means of public transport. No single abstract standard of reasonableness can be laid down. This is a fact-centric assessment that has to be made in the context of the established facts. It is now settled that there are at least two types of characteristics which the court can take into account in assessing whether the objective test has been met, namely characteristics affecting a similarly placed reasonable man's level of self-control and characteristics affecting the gravity of the provocation. However, an accused's exceptional hot temper *alone should not* be taken to exonerate an exceedingly violent response. In *Camplin*, Lord Diplock with his customary acuity explained the rationale for this (at 716F):

The public policy that underlay the adoption of the "reasonable man" test in the common law doctrine of provocation was to reduce the incidence of fatal violence by preventing a person relying upon his own exceptional pugnacity or excitability as an excuse for loss of self-control.

52 In similar vein, in *Mahmood*, Dhavan J penetratingly observed (at 542):

The law cannot permit ill-temper and similar abnormalities to become assets for the purpose of committing murder, for if it did, "a bad tempered man will be entitled to a lighter verdict of manslaughter where a good tempered one would be convicted for murder" Avory, J. in *Rex v. Lesbini*, (1914) 3 KB 1116.

53 However, with regard to the gravity of the provocation, the court can take into account *any* of the accused's personal characteristics which affect the gravity of the provocation. In his seminal article on *The Doctrine of Provocation* [1976] CLJ 292, Professor Andrew Ashworth clarified the position (at 299–300):

If it is accepted that a primary purpose of the "reasonable man" test is to ascertain whether the accused showed reasonable self-control in the face of the provocation given, then it follows that individual deficiencies of temperament and mentality must be left out of account. On the other hand, a proper application of the standard does involve the jury in assessing the degree and gravity of the provocation. How can the gravity of provocation be measured? The first point, which could almost be described as a matter of definition if it had not been judicially challenged, is that it rarely makes sense to describe a provocation as simply "grave." Perhaps it makes sense with serious assaults, which may be universally perceived as gravely provoking; but in general a provocation can only be described as "grave" in relation to persons of a particular class. *Thus the sight of two persons indulging in sexual intercourse cannot properly be described as a grave provocation—for it would hardly provoke the unrelated intruder to anything more than embarrassment—without adding that it would be grave for someone who is married, engaged or related to one of the participants.* Similarly, to say that throwing a pigskin shoe is a grave provocation would be incorrect as a general proposition: but it would be grave to a Moslem. And to describe knocking a person's crutch away as a grave provocation only makes sense in relation to a person who relies on a crutch. **To be meaningful, the "gravity" of provocation must be expressed in relation to persons in a particular situation or group." For this reason it is essential and inevitable that the accused's personal characteristics should be considered by the court. The proper distinction, it is submitted, is that individual peculiarities which bear on the gravity of the provocation should be taken into account, whereas individual peculiarities bearing on the accused's level of self-control should not.** [emphasis added]

54 In *Attorney General for Jersey v Holley* [2005] 2 AC 580 ("*Holley*"), Lord Nicholls observed as follows (at [11]):

Hence if a homosexual man is taunted for his homosexuality it is for the jury to consider whether a homosexual man having ordinary powers of self-control might, in comparable circumstances, be provoked to lose his self-control and react to the provocation as the defendant did. Authority for this proposition, if needed, is the "glue-sniffer" case of *R v Morhall* [1996] AC 90. There the deceased nagged the defendant about his addiction to glue-sniffing. The problem before the House of Lords was whether this addiction should have been taken into account at the defendant's trial as affecting the gravity of the provocation: see p 97D. Lord Goff of Chieveley, with whose speech all members of the House agreed, said it should. The thrust of his reasoning was that, for this purpose, "the entire factual situation" was to be taken into account. This includes matters not falling strictly within the description "characteristics". It also includes matters which are discreditable to the defendant. Lord Goff said, at p 99:

"suppose that a man who has been in prison for a sexual offence, for example rape, has after his release been taunted by another man with reference to that offence. It is difficult to see why, on ordinary principles, his characteristic or history as an offender of that kind should not be taken into account as going to the gravity of the provocation."

55 In *Holley*, the Privy Council also approved of an earlier decision in *Luc Thiet Thuan v R* [1996] 2 All ER 1033, where it was held that the accused's mental abnormality, unless it formed the subject of the taunts, is not a relevant characteristic for the purposes of the objective test. In *Johari*, this court made it clear (at [94]) that the *Holley* approach is part of Singapore law. At this juncture, it bears mention for completeness that *Holley* is no longer the cornerstone of the law on provocation in England following the introduction of the partial defence of loss of self-control by s 54 of the Coroners and Justice Act 2009 (c 25)(UK). These changes appear to have been precipitated by long-standing problems with provocation, including the criticism that the defence is not underpinned by any clear rationale and problems with the concept of loss of control in relation to the "slow burn" type of cases. [\[note: 71\]](#)

56 In the present case, the accused's counsel asserted that the fact that he suffered from ADHD, which made him more easily provoked and prone to rage outbursts, should be taken into account in assessing the gravity of the provocation. This argument is untenable as this deficiency had, on the basis of the evidence, no apparent nexus whatsoever to the subject matter of the provocation. Besides this, his satisfactory work history appeared to militate against the likelihood of this being a significant consideration.

57 We accept, however, that the accused's mental background may to an extent be taken into account in assessing the gravity of the provocation. In *Nanavati*, the Indian Supreme Court held at 628 and 630:

In *Empress v Khogayi*, ILR 2 Mad 122, at p.123...The learned Judges observed:

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation."

...

... The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

58 In *Kwan Cin Cheng*, this court agreed (at [50]) that the accused's emotional state and mental background leading to it could be taken into account in assessing the gravity of the provocation:

In the present case, we were of the view that the emotional state of mind of the respondent could properly have been taken into account. The respondent was in love with the deceased and was pleading with her to come back to him. In the words used in *Camplin* and *Ithinin*, his emotional state affected the "gravity of the provocation" by the deceased as it made her callous remarks harder to bear. Such an emotional state cannot be considered a unique "peculiarity" of the respondent which diminished his powers of self-control below that expected from the ordinary person and which should be excluded according to *Luc Thiet Thuan*. The learned trial judge found that the respondent was not normally an aggressive person; his emotional state at the material time was a temporary reaction to the deceased's recent break-up with him after a long courtship, and in applying the objective test in *Vijayan*, the "reasonable man" must be placed in the same circumstances and background events as the respondent and hence would in all likelihood have been experiencing much the same mental anguish as the respondent's. It would have been absurd to apply the objective test by comparing the respondent's reaction with a hypothetical man of his age and sex but in good spirits and with no sentimental feelings for the deceased. **The deceased's provocative words could not be artificially viewed in isolation; their effects on the respondent had to be considered along with the events of the preceding days, and there is ample authority holding that earlier events and the "mental background" they created in the accused may be relevant:** *Mat Sawi bin Bahodin v PP* [1958] MLJ 189 at 191, *Chan Tong v R* [1960] MLJ 250 at 251, *Nanavati v State of Maharashtra* AIR (49) 1962 SC 605 at 630, *Vijayan v PP* [[1993] 1 SLR(R) 547] at [23], *Luc Thiet Thuan v The Queen* [1996] 3 WLR 45 at 58. [emphasis added]

59 It follows that the deceased's taunt that the man in the red tee shirt was a better lover than the accused ought not to be viewed in isolation, and its effects on the accused must be considered against the background of their strained relationship and the events that transpired earlier that day. *It was clear that the accused loved the deceased passionately although their relationship was nothing short of tumultuous. He has both a possessive and obsessive personality and is prone to emotional outbursts.* The accused had brought her to meet his parents, met her frequently and often had sex with her. He had also met both her parents, professed his love for the deceased and promised to marry her. Further, he had also manifested his commitment to her repeatedly despite the ever present turbulence in their relationship. It may be recalled that in May 2008, he had wanted to take up a part-time course in Petroleum and Chemical Process Technology at ITE College East but sacrificed his own studies because the deceased had wanted to resit her GCE "O" Level examination but had no money to do so (see [7] above). He went so far as to lie to his grandmother that he needed money to pay for his tuition fees and when the latter gave him a gold bangle to be pawned, he gave the money to the deceased for her studies. [\[note: 72\]](#) He had bought the deceased a "Thali", a Hindu nuptial chain, to symbolise that she was his wife. [\[note: 73\]](#) Even after the deceased made the police report against him for raping her, they reconciled and continued to see each other and again revived their intimate relationship. In fact, on 5 July 2008, just two days before the killing, the accused and the deceased went to Sentosa and spent the night together in a tent where they had sex. [\[note: 74\]](#) In addition, *only minutes before killing her*, the accused told the deceased's mother that he wanted to marry the deceased and "see [her] face everyday". [\[note: 75\]](#) He also said that he used to join gangs in the past but had changed after meeting the deceased and also started going to church every Saturday under her influence. It was clear that, tragically, their lives had become intensely and inextricably intertwined.

60 The deceased's taunt ought, in the prevailing circumstances, to be viewed in the context of her

previous occasions of infidelity and the fact that the accused had just earlier that day seen the deceased behaving intimately with the man in the red tee shirt on the morning of the killing. In *Kwan Cin Cheng*, this Court noted (at [72]):

***Romantic and sexual relationships arouse the strongest of human emotions*** . Even assuming that the respondent reacted in particular to his understanding that the deceased was happy in bed with her new boyfriend, this alone could not result in him failing the objective test; it is hardly unusual for a man to be preoccupied with the sexual fidelity of his lover, and to assume the worst if told that she was happily in love with someone else. [emphasis added]

61 We note that the Judge after citing *Kwan Cin Cheng* and *Ithinin* found (GD at [36]):

Undoubtedly, the deceased's words as recounted by the accused had an impact on him. They were lovers, and she was telling him not only that she was seeing another person, but she considered that person to be a better lover than him. **A reasonable man in his position would be hurt by that, but not so enraged that he would lose his power or self-control. It could be different if she had said something personal about him, eg, he was a poor lover or ridiculed him for any sexual deficiencies that he might have.** Yet all that she is alleged to have said was that the other man was a better lover. On an objective review of that, the second objective requirement in Exception 1 is not satisfied. [emphasis added]

In our view, the Judge was mistaken in concluding that all she said was the other person was a "better lover" and that the words uttered could not amount to a grave provocation. First, it is far from clear what "reasonable man" the Judge used as a yardstick to assess the "reasonableness" of the accused's reaction. Do the words "*in his position*" refer to his background or the incident alone or both? In our view, the test is a contextual one that must take into account the accused's background and all relevant circumstances (see [58] and [59] above). Second, here the deceased did not, as the accused had expected, seek forgiveness for her tryst with the man in the red tee shirt, as she had done when the accused confronted her about her relationship with Kesh. Instead, when confronted she had angrily ridiculed him by asserting that the accused's sexual prowess was poorer than that of the man in the red tee shirt and had sought to justify her infidelity on this ground. This utterance was the proverbial last straw for the accused. *Considering the accused's intensely passionate feelings for the deceased and the fact that he expected to reconcile with her and marry her, it was more probable than not that the deceased's taunt that the man in the red tee shirt was a "better lover" than he transported his passions to such an extent that he entirely lost his self control momentarily.* Unlike the Judge, we conclude that in the heat of the moment and in the context of the unfortunate couple's overwhelming emotional turbulence, an objective review of the facts suggests that the requirement that the provocation be 'grave' in Exception 1 was satisfied. In arriving at this conclusion, we take into account the fact that the Prosecution accepts the accused's version of what immediately transpired prior to his frenetic stabbing of the deceased. [\[note: 76\]](#) For completeness, we should point out that the Prosecution, quite correctly, has not suggested that proportionality was a key consideration in factually assessing the availability of the defence in a matter such as this. On this point, we need only reiterate what this Court stated in *Kwan Cin Cheng* on this issue, at [69]:

In practice, an inquiry into "proportionality" does little to answer the essential question of whether an ordinary person would, upon receiving the provocation in question, have lost his self control to this extent and reacted as the accused did.

62 Accordingly, we find that the accused had satisfied both the subjective and objective tests of the partial defence of provocation, and that this reduces his charge from murder to culpable homicide

not amounting to murder.

63 As for the partial defence of diminished responsibility, we found that this was not substantiated. Although Dr Tan had found that the accused had ADHD, we preferred the opinion of Dr Kua, which was strongly supported by the objective evidence. Even if the accused had ADHD, it was not established that it had substantially impaired his mental responsibility for the murder of the deceased.

## Conclusion

64 For the reasons stated, we find on the balance of probabilities the accused has made out the defence of grave and sudden provocation. Accordingly, we set aside the conviction on the charge of murder and convict the accused on a charge of culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code. We will hear counsel on the appropriate sentence to be imposed on the accused.

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[\[note: 1\]](#) Further statement of the accused, Vol 4A of Record of Proceedings ("ROP") at p 591, para 1.

[\[note: 2\]](#) Dr Tommy Tan's Report, Vol 4A of ROP at p 534

[\[note: 3\]](#) Sahayam Elis d/o G. Sebastian's Statement, Vol 4A of ROP at p 720

[\[note: 4\]](#) Statement of the accused, Vol 4A of ROP at p 551, para 4

[\[note: 5\]](#) Report of Dr Joshua Kua at p 248 para 5, see Vol 4 of ROP at p 354

[\[note: 6\]](#) Statement of the accused, Vol 4A of ROP at p 551, para 4

[\[note: 7\]](#) Report of Dr Joshua Kua at p 248 para 5, Vol 4 of ROP at p 354

[\[note: 8\]](#) Statement of the accused, Vol 4A of ROP at p 552, paras 5-9

[\[note: 9\]](#) Statement of the accused, Vol 4A of ROP at p 553, para 10

[\[note: 10\]](#) *Ibid* at p 553, para 12

[\[note: 11\]](#) *Ibid* at pp 553-554, para 13

[\[note: 12\]](#) *Ibid* at p 554, para 14

[\[note: 13\]](#) *Ibid* at p 555, para 17

[\[note: 14\]](#) Statement of the accused, Vol 4A of ROP at p 555, para 19

[\[note: 15\]](#) *Ibid* at p 556, para 21

[\[note: 16\]](#) *Ibid* at p 556, para 22

[\[note: 17\]](#) *Ibid* at p 557, para 23

[\[note: 18\]](#) Statement of the accused, Vol 4A of ROP at para 25

[\[note: 19\]](#) *Ibid* at p 558, para 29

[\[note: 20\]](#) *Ibid* at para 30

[\[note: 21\]](#) *Ibid* at para 31

[\[note: 22\]](#) Statement of the accused, Vol 4A of ROP at p 559, para 32

[\[note: 23\]](#) *Ibid* at para 34

[\[note: 24\]](#) *Ibid* at p 560, para 36

[\[note: 25\]](#) *Ibid* at para 37

[\[note: 26\]](#) *Ibid* at para 38

[\[note: 27\]](#) *Ibid* at para 39

[\[note: 28\]](#) Statement of the accused, Vol 4A of ROP at p 563, paras 46 and 47

[\[note: 29\]](#) *Ibid* at p 561, para 43

[\[note: 30\]](#) *Ibid* at p 564-565, para 51

[\[note: 31\]](#) *Ibid* at p 565, para 52

[\[note: 32\]](#) *Ibid* at para 53

[\[note: 33\]](#) *Ibid* at para 54

[\[note: 34\]](#) *Ibid* at pp 565-566, para 55

[\[note: 35\]](#) *Ibid* at p 566, para 56

[\[note: 36\]](#) Statement of the accused, Vol 4A of ROP at p 566, para 58

[\[note: 37\]](#) *Ibid* at p 567, para 61

[\[note: 38\]](#) *Ibid* at pp 567-568, para 63 - 66

[\[note: 39\]](#) Statement of the accused, Vol 4A of ROP at at p 568, para 65

[\[note: 40\]](#) *Ibid* at para 67 (also corroborated by the statement of Viknesh s/o Rajandren in Vol 4A of ROP at pg 739, para 29)

[\[note: 41\]](#) *Ibid* at para 68

[\[note: 42\]](#) *Ibid* at pg 569, para 70

[\[note: 43\]](#) *Ibid* at pp 569-570, paras 71- 75

[\[note: 44\]](#) Notes of Evidence ("NE"), Vol 2 of ROP, Day 5 at p 6, lines 2-4

[\[note: 45\]](#) *Ibid* at para 75

[\[note: 46\]](#) *Ibid* at p 571, para 77

[\[note: 47\]](#) *Ibid* at p 572, para 82

[\[note: 48\]](#) Notes of Evidence ("NE"), Vol 2 of ROP, Day 5 at p 572, para 81-83

[\[note: 49\]](#) *Ibid* at para 83

[\[note: 50\]](#) Statement of Facts, Vol 4 of ROP at pg 28, para 65

[\[note: 51\]](#) Vol 4A of ROP at p 545

[\[note: 52\]](#) Vol 4A of ROP at p 261

[\[note: 53\]](#) NE, Vol 1 of ROP, Day 3 at p 39, lines 22-32

[\[note: 54\]](#) *Ibid* at p 40, lines 1-15

[\[note: 55\]](#) Vol 4 of ROP, Defence Skeletal Closing submissions at pg 76, para 2

[\[note: 56\]](#) Note of Argument before the CA at p 25, lines 25-32 andp 26, lines 1-8

[\[note: 57\]](#) See also *ibid* at p 22, lines 5-10

[\[note: 58\]](#) NE, Vol 2 of ROP, Day 5 at p 13, lines 15-16 and 21-23

[\[note: 59\]](#) Statement of Viknesh s/o Rajandren, Vol 4A of ROP at p 739, para 29 and Statement of Balasubramaniam s/o Tangavelu, Vol 4A of ROP at p 741, para 3

[\[note: 60\]](#) Statement of Sahayam Elis d/o G.Sebastian, Vol 4A of ROP at p 723, paras 19 and 20

[\[note: 61\]](#) Statement of Sahayam Elis d/o G.Sebastian, Vol 4A of ROP at pg 577, para 98

[\[note: 62\]](#) *Ibid* at pg 578, para 101

[\[note: 63\]](#) NE, Vol 2 of ROP, Day 5 at p 6, lines 15-20

[\[note: 64\]](#) Vol 4A of ROP at p 570, para 73

[\[note: 65\]](#) *Ibid* at p 577, para 98

[\[note: 66\]](#) Vol 4A of ROP at pg 570, para 73

[\[note: 67\]](#) Notes of argument before the CA at p 18, lines 8-20

[\[note: 68\]](#) *Ibid* at pg 566, para 56

[\[note: 69\]](#) Notes of argument before the CA(26 May 2012) at p 22, lines 28-31

[\[note: 70\]](#) NE, Day 2at p 51, lines 18-20 and p 52, lines 10-13

[\[note: 71\]](#) UK Law Commission, *Partial Defences to Murder* (6 August 2004). See also UK Ministry of Justice, *Murder, manslaughter and infanticide: proposals for reform of the law (Consultation Paper CP 19/08)(2008)* at paras 17-20

[\[note: 72\]](#) Vol 4A of ROP at pp 553-554, para 13

[\[note: 73\]](#) *Ibid* at pg 570, para 74

[\[note: 74\]](#) *Ibid* at pg 561, para 43

[\[note: 75\]](#) *Ibid* at pg 723, para 19

[\[note: 76\]](#) Notes of argument before the CA at p 27, line 9

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