Wang Wenfeng *v* Public Prosecutor
[2012] SGCA 47

Case Number	: Criminal Appeal No 17 of 2011
Decision Date	: 23 August 2012
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Wong Hin Pkin Wendell (Drew & Napier LLC) and Luo Ling Ling (Colin Ng & Partners LLP) for the appellant; Bala Reddy, Thong Lijuan Kathryn and Tan Lin Yen Ilona (Attorney-General's Chambers) for the respondent.
Parties	: Wang Wenfeng — Public Prosecutor

Criminal law – Offences – Murder

Criminal law – Elements of crime – Coincidence of mensrea *and* actusreus

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2011] SGHC 208.]

23 August 2012

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by the appellant, Wang Wenfeng, against the decision of the trial judge ("the Judge") in *Public Prosecutor v Wang Wenfeng* [2011] SGHC 208 ("the Judgment"). The Judge convicted the appellant of murder under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") based on the following charge ("the Murder Charge"): [note: 1]

> on the 11th day of April 2009, sometime between 4 a.m. and 9.04 a.m., in the vicinity of Jalan Selimang, Singapore, did commit murder by causing the death of one Yuen Swee Hong (male/Date of Birth: 4 July 1951), and you have thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224.

2 The appellant appealed against his conviction and sentence in relation to the Murder Charge, arguing that the Judge erred in finding that (a) he had caused the death of Yuen Swee Hong ("Yuen"); and (b) he had the requisite *mens rea* under s 300(*c*) of the Penal Code. [note: 2] At the conclusion of the appeal, we dismissed the appellant's appeal and upheld his conviction and sentence. We now set out our detailed grounds of decision.

Background of the case

3 The deceased, Yuen, was a 58-year-old SMRT taxi driver who had been driving taxis for a living for 20 years. On 11 April 2009, he was robbed and killed during one of his night shifts, and subsequently abandoned in a forested area. This appeal illustrates the risk faced by taxi drivers when driving would-be robbers alone at night and in the early hours of the day. Unlike in some other cities, taxis in Singapore are not fitted with safety partitions to shield taxi drivers from potentially violent

assault by passengers. The presence or absence of such safety devices could, however, make all the difference in certain situations, such as the present.

4 The appellant, aged 31 at the time of the offence, was a male foreign worker from the Fujian province of China. [note: 3] He was facing difficult personal circumstances as he needed money to pay for his sick mother's medical fees in China, but was unable to secure regular employment in Singapore. [note: 4] He had also been told by his last employer to leave Singapore by 15 April 2009, but was unable to do so as he could not afford his air ticket back to China. [note: 5] His frustration was compounded when his bicycle was stolen on the night of 10 April 2009. [note: 6] It was then that he decided to commit robbery. [note: 7]

The robbery-turned-murder

5 At around 4.00am on 11 April 2009, the appellant left his home with a haversack containing a knife, a pair of cotton gloves and a small bottle of water. [note: 8] He walked to Sun Plaza at Sembawang Drive, where he eventually planned to rob a taxi driver. [note: 9] He however became nervous and allowed many taxis to drive past him. [note: 10] In an unfortunate turn of events, Yuen drove past the appellant, stopped, and reversed back towards the appellant. Yuen asked the appellant twice where he wanted to go and it was at this point that the appellant decided to proceed with his robbery plan. [note: 11] He boarded Yuen's taxi through the left passenger door at the back and told Yuen to drive to "Bao Ping Chun", [note: 12] which was in the vicinity of Sembawang Park. As they neared the dead end of Jalan Selimang by Sembawang Beach, the appellant shifted to position himself behind Yuen. He then put on his gloves and took out the knife from the haversack. [note: 13]

6 After the taxi stopped, the appellant started his attack on Yuen. The appellant supported himself by holding onto the backrest of the driver's seat with his right hand, and brought his left hand bearing the knife against Yuen. [note: 14] He ordered Yuen to turn off the taxi's engine and hand over his money. [note: 15] A struggle ensued between Yuen and the appellant, [note: 16] during which Yuen was stabbed and rendered unconscious. [note: 17]

7 Thinking that Yuen was dead, the appellant then carried Yuen, who was bleeding profusely and covered in blood, up a slope of the forested area and placed Yuen's body amongst the undergrowth. Before leaving, he checked Yuen's pockets for money. He found some ten dollar notes and took them with him. [note: 18]

Events following the attack

Immediate attempts to avoid detection

8 Immediately after disposing of Yuen's body, the appellant embarked on a systematic series of actions designed to conceal his involvement in Yuen's death. He first washed off the blood on his body at the nearby beach. He then drove the taxi away and parked it at Canberra Link, a multi-storey car park. There, he tried to wash away the blood in the taxi using the bottle of water in his haversack. [note: 19] This caused wipe marks, diluted smears and flow patterns to appear on both the interior and exterior surfaces of the taxi. [note: 20] To prevent the taxi from being located, [note: 21] he cut the cables of the taxi's electronic payment machine, which he thought was a Global Positioning

System device. [note: 22] He then took Yuen's mobile phone and went home by bus. He did not take the coins in the taxi because there was too much blood on them. [note: 23]

9 Reaching home, the appellant took a shower and packed his soiled clothing into his haversack. He then went out and threw it into a canal near Nee Soon Road. As the haversack did not sink, he eventually hid it in a forested area nearby.

The ransom demands

10 Later, at about 9.00am, the appellant decided to return an unanswered call on Yuen's mobile phone. He called the number and established that the caller was Yuen's wife, Chan Oi Lin ("Chan"), who was trying to contact Yuen as he had not returned home from his night shift. The appellant thereupon decided to exploit the situation by informing Chan that Yuen was alive and in his custody, and that he would only release Yuen upon Chan paying $150,000. He told Chan that Yuen was "going to die" and warned her not to alert the police. [note: 24]

11 From then till the night of 12 April 2009, the appellant and Chan had several telephone exchanges, during which the ransom sum was reduced from $150,000 to $5,000. The appellant also told Chan that "[Yuen] has not eaten any food for two days, [and] has bled a lot" (at [4] of the Judgment). He instructed Chan to pay the money into a China Construction Bank account. Hours later, the appellant called Chan and asked again whether she had transferred the money. When Chan told him that she did not know how to do it, the appellant terminated the call. That was the last time she heard from him.

Discovery and examination of Yuen's taxi

12 The police found Yuen's taxi at Deck 5B of the Canberra Link car park at about 11.35pm on 11 April 2009. It was examined by Dr Tay Ming Kiong ("Dr Tay"), a Senior Consultant Forensic Scientist at the Health Sciences Authority ("HSA") twice, *ie*, on 13 April 2009 and 22 April 2009. Based on the state of disarray in the taxi, and the amount of blood and blood stain patterns found, Dr Tay concluded that "[a] struggle and blood-shedding event [was likely to have] occurred in the cabin, causing the person at the driver's seat to be injured with serious bleeding wounds". [note: 25] The many blood smears found on the top and sides of the driver's headrest and backrest suggested that the struggle had occurred between the driver and an assailant who was positioned at the rear passenger seat. [note: 26] The heavily-stained state of the beaded mat, seat-cushion and seat-pan of the driver's seat, as well as a large blood stain measuring 28 cm by 23 cm on the rubber mat in front of the driver's seat, led Dr Tay to conclude that Yuen suffered from serious bleeding wounds and was actively bleeding in the driver's seat for some time. [note: 27]

The appellant's initial false police statements

(1) The First Statement

13 The appellant was arrested on 13 April 2009 at People's Park Complex where he was collecting a one-way air ticket to Xiamen, China [note: 28] for a flight departing on the following day. [note: 29] His first police statement was recorded on 14 April 2009 ("the First Statement"). [note: 30] At the time, Yuen's body had not yet been discovered.

14 In the First Statement, the appellant lied that he had retrieved Yuen's phone from a dustbin at

a bus stop which he happened to be at on 11 April 2009. [note: 31] He said that he was inspired by a television programme about a phone scam, and had thus decided to demand a ransom from Chan. He then led the police to various places where he claimed to have found Yuen's mobile phone, called Chan, and finally disposed of Yuen's phone.

(2) The Second Statement

15 Yuen's body was recovered at about 4.25pm on 17 April 2009, when the appellant led the police to the place where he had disposed of Yuen's body. In his second police statement recorded on the following day, 18 April 2009 ("the Second Statement"), [note: 32] the appellant again sought to distance himself from Yuen's death, stating that he had accompanied one Chen Long Hua to "Bao Ping Chun", and that it was Chen Long Hua who had killed Yuen. The appellant subsequently admitted in his later statement (see [16] below) that the Second Statement was false and that he merely bore a grudge against Chen Long Hua. [note: 33]

The appellant's subsequent police statements

(1) The Third Statement

16 On 26 April 2009, the appellant voluntarily asked to give another statement to the police ("the Third Statement"). This statement contained material admissions in relation to the Murder Charge as follows: [note: 34]

> Today while I was in my cell in the lock up I requested the Police officer on duty to call you [*ie*, Inspector Daniel Wong] to come and see me, I told the officer that I wish to confess to the Police what actually happened. For the last few nights I have not been able to sleep because I have been thinking about the incident and have been worried about my mother. She suffers from stomach cancer and I hope that by confessing, I can give her some peace and hope that I can return to her in China. I am also requesting to see the family of uncle to 'kao tao' apologize to the auntie and the family.
>
> I mentioned in my earlier statements that Chen Long Hua is involved, this is a lie. He was not involved in this case at all. He owes me RMB35,000 which I intended to send to my mother so she can get medical treatment for her stomach cancer. Chen Long Hua was very cruel not to give me my money and my mother has no medicine to eat. He is worse then [*sic*] me and if I deserve death, he deserves it even more. I was alone and I did not intend to kill the uncle. I wanted to rob him and I asked him not to move but he did. I was holding a knife and we had a struggle in the taxi. Somehow I do not know how my knife came in contact with him and he stopped moving. I got out of the taxi to check on his condition, but when I pulled his arm, he just fell out of the taxi. I then carried him on my shoulder with his head behind me and brought him up the trees and placed him there. My arms and body was stained and wet with blood and so I went to the sea and washed up. I was wearing a shirt over a T-shirt inside, so I took off the outer shirt and placed it into my bag.

17 The recording of the Third Statement was paused for the appellant to rest and to have his dinner, after which he proceeded to describe in greater detail the struggle between Yuen and himself, as well as his disposal of Yuen's body: [note: 35]

> … Once in the taxi, I sat on the rear seat at the left. The uncle drove straight and there was no conversation between us but as we were arriving, I shifted my sitting position to the right side

just behind the uncle. He then told me that he does not know the way and I directed him to turn into the deserted road. Once he turned into the road, I took out my gloves and put them on and also took out my knife. We arrived at a dead end. *When the taxi stopped I held the knife in my left hand with the blade pointed downward on my palm, I put my left arm over the uncle's shoulder and the cutting blade of the knife against his neck.* I did not use my right hand to hold the knife against the uncle because I was seated on the rear right side of the taxi, and the frame of the taxi would obstruct my hand movement. Instead, I used my right hand to support my body forward by holding onto the back rest of uncle's seat. I then ordered the uncle to stop the engine and he did so only after I repeated myself two or three times. I told him to hand over his money to me and not to move. The uncle said 'hao, hao' and also asked me to release the grip of my left arm on him and he will give me the money. I loosen my grip but I jerked slightly back as I lost my balance when I release[d] my grip around his shoulder. Immediately he struggled and used both his hands to hold on to my left hand which was still holding the knife. I was scared and I moved my right hand over the right side of his head rest and covered his facial region. *I do not know which part of his face I covered, at the same time, I pulled the pointed end of the knife in an inward motion towards him a few times and he suddenly stopped moving.*

After he stopped moving, I pulled my hands back to the rear and the knife was still in my left hand. I quickly alighted the taxi while still holding onto the knife. I opened the right rear passenger door with my right hand and went to the driver side to open the door. *I saw that uncle was seat [*sic*] in a slanted position towards the left. I could see there was a lot of blood* because the light inside the taxi came on when the door was opened. I was very frightened and I shook him by his right upper arm to check if he was still alive. He did not respond and so I pulled his right arm. Immediately he fell out of the seat and onto to [*sic*] the ground. ... At this point I heard voices of people and panicked. I placed my knife into the rear left pocket of my jeans and picked uncle up and placed him on my right shoulder with his head on behind me, and walked upward towards the trees. I walked into the trees for a short distance and placed him on the ground. After putting him on the ground, I touched his pockets to check if there was any money. I felt there was some money on his left breast pocket of his shirt. I took it and placed it into the pocket of my own shirt. I did not count much [*sic*] there was. Thereafter I ran down the slope towards the taxi.

[emphasis added]

18 The appellant was given a further rest, after which he was asked to answer a series of questions, including the following: [note: 36]

Q8: During the struggle and immediately after, can you tell me if the uncle had any spontaneous reactions?

A8: *I had my right hand over his facial region and pulling the knife towards him, the knife went forward and backward as a result of my pulling and his pushing. After a few motions of back and forth, he stopped moving and was leaned slanted.* I saw his hands clenched in a fist. He did not make any sound I think because my hand was over his facial region.

Q9: When you pulled him out of the taxi with both your hands, you mentioned that he fell out to the ground. Can you tell me more about the condition of the driver?

A9: He was lying on his side, I did not see because I heard some voices and picked him up and walked very quickly up the slope. *I did not see where he was bleeding from because he was all covered with red colour*. I am not sure if he was still breathing.

...

Q11:Why did you placed [*sic*] the taxi driver among the trees?

A11:I was afraid that people will see uncle and call the Police. *He was bleeding so much and when I shake [*sic*] him, he did not move or respond. I thought it [*sic*] is probably dead.* Especially when he fell out from the taxi to the ground, he did not make any sound.

Q12:Can you tell me why you took away the Nokia handphone which purportedly belonged to the said taxi driver?

A12:I wanted to sell the hand phone but it rang and it occurred to me to use the opportunity to try to get auntie to give me some money. So I bluffed her to make her think I captured uncle and she has to pay me.

[emphasis added]

(2) The Fourth Statement

19 A further police statement was recorded on the night of 27 April 2009 to correct some aspects of the Third Statement ("the Fourth Statement"). In it, the appellant changed his position, stating that he was actually unsure if the sharp edge of the knife had been pointed towards Yuen: [note: 37]

I wish to make the following amendments to [the Third Statement] that was just read to me. In paragraph 63, during my struggle with the uncle in the taxi, when he was pushing my hand which was holding the knife away, and I was pulling it inwards towards him, I am now not sure if the pointed end of the knife was pointed towards him. I only think it was pointed towards the uncle.

Evidence on the cause of death

Unascertainable medical cause of death

20 Associate Professor Gilbert Lau ("A/P Lau"), a Senior Consultant Forensic Pathologist at the HSA, was present when Yuen's body was recovered from the undergrowth on 17 April 2009 and estimated the post-mortem interval to be in the region of one week. He subsequently conducted an autopsy on the body. [note: 38] However, due to the advanced stage of decomposition with heavy maggot infestation and extensive skeletonisation of the body, as well as the loss of the internal organs, the existence of external or internal injury to the body (if any) could not be determined. [note: 39] In view of the state of advanced putrefaction of the body, A/P Lau was unable to ascertain the cause of death. [note: 40]

The cuts found on Yuen's shirt

21 Given the skeletonised state of the body, the injuries sustained by Yuen had to be determined from the cuts found on Yuen's shirt. This evidence was critical to the determination of the appellant's guilt. It was the Prosecution's case that the appellant had intentionally stabbed Yuen *repeatedly*, and that *at least five stab wounds* had been inflicted on Yuen's chest region. [note: 41] The appellant challenged the Prosecution's case, arguing that there was only one stab wound, which was accidentally inflicted during the struggle between them. [note: 42]

22 The appellant's argument was based primarily on A/P Lau's first autopsy report dated 18 April 2009 and his testimony that he had only observed one cut on Yuen's shirt (*viz*, the 3 cm Wavy Cut described in [23] below) after he had removed it from Yuen's body in order to perform an autopsy on 18 April 2009. [note: 43] The appellant also relied on the testimony of the investigating officer, Inspector Daniel Wong, that he saw only one cut on Yuen's shirt when he took a photo of it at the mortuary. [note: 44]

23 However, Dr Tay, who had examined the shirt at the forensics laboratory on 5 May 2009, found a total of five cuts (which he identified as stab-cuts) on the front chest region of Yuen's shirt: [note: 45]

(a) a slightly wavy cut measuring 3 cm in overall length above the left breast pocket ("3 cm Wavy Cut"), which was the one cut observed by A/P Lau and Inspector Daniel Wong;

(b) a 20 mm straight cut on the right edge of the front central placket, just below the collar button ("20 mm Cut");

(c) a 13 mm straight cut on the right edge of the front central placket, which was 7 mm below the 20 mm Cut ("13 mm Cut");

(d) a broad V-shaped cut on the right side of the shirt at armpit level, with each segment of the "V" measuring 5 mm ("V shaped Cut"); and

(e) a 7 mm straight cut which was about 2.5 cm below of and 1 cm to the left of the V shaped cut ("7 mm Cut").

24 Dr Tay observed that all of the five cuts described had clean-cut edges, and were consistent with stabs, [note: 46] indicating that Yuen was stabbed at least five times in his chest region. He also confirmed that the knife carried by the appellant was capable of causing all of the five stab-cuts. [note: 47]

25 In his report dated 30 August 2010, Dr Tay described the knife as follows: [note: 48]

The blade measured 12.5 cm long. It had a smooth beveled cutting edge, and tapered to a sharp pointed tip. The spine (back) of the blade was 1.5 mm thick.

The blade was:

- 8 mm wide 1 cm from the tip,
- 15 mm wide 3 cm from the tip,
- 18 mm wide 7 cm from the tip (about mid-section), and
- 19 mm wide near the handle.

Based on these dimensions (and giving some allowances for, *eg*, the folded nature of the shirt, which explained the curved nature of the 3 cm Wavy Cut), [note: 49] the 3 cm Wavy Cut and 20 mm Cut were likely to have been very deep, with the former achieving full, or near-complete, penetration of

the knife's 12.5 cm blade, and capable of causing heavy bleeding sufficient in the ordinary course of nature to result in death.

The decision below

26 The Judge did not make a specific finding on whether there was one stab-cut or at least five stab-cuts on Yuen's shirt (at [25] of the Judgment). He found that the number of stab wounds inflicted was not, in the circumstances, a critical factor which would have materially affected the outcome of the case (at [30] of the Judgment).

27 Based on the evidence, the Judge concluded that the cause of death was loss of blood from one or more stab wounds inflicted by the appellant on Yuen's chest (at [24] of the Judgment). The Judge held that, even if there had only been one stab wound, such wound must have been very severe to have caused the extensive blood loss, which was sufficient in the ordinary course of nature to result in death (at [30] and [33] of the Judgment). Such a wound could only have been intentionally inflicted with the knife being pointed at Yuen with a firm hand (which was pulling the knife towards Yuen against the resistance exerted by him, as inferred from the appellant's own account of the struggle) (at [28] and [30] of the Judgment). The Judge thus found the appellant guilty of murder under s 300(*c*) of the Penal Code.

The issues on appeal

28 Before us, the appellant argued that he had not intentionally inflicted any bodily injury on Yuen, and that there had only been one stab wound, which was accidentally inflicted. Furthermore, the appellant argued that there was insufficient evidence to show that the single stab wound had caused Yuen's death. [note: 50]

29 The appellant also raised a new defence of sudden fight under Exception 4 to s 300 of the Penal Code. [note: 51] We dismissed this defence peremptorily as there was absolutely no merit in it. Based on the appellant's own account of the struggle between him and Yuen in the Third Statement (see [17]–[18] above), Yuen was trying to push away the knife while the appellant was pulling it towards Yuen's body. This was a one-sided attack on Yuen who tried to defend himself.

30 The issues of fact raised for our determination were as follows:

(a) whether the appellant had intentionally stabbed Yuen in the chest region once or at least five times, resulting in injuries sufficient to cause death in the ordinary course of nature ("Issue (a)"); and

(b) whether there was reasonable doubt that Yuen died from his injuries ("Issue (b)").

31 The Prosecution's submissions also raised the question of law as to whether there was a concurrence of the *mens rea* and *actus reus* of the offence under s 300(*c*) of the Penal Code, in the light of the appellant's argument that he believed that Yuen was dead when he abandoned Yuen's body in the undergrowth, and if not, whether he could be guilty of murder under s 300(*c*).

Our decision

Issue (a)

The elements of s 300(c) murder

32 The ingredients of the offence of murder under s 300(*c*) are as follows: (a) a death has been caused to a person by an act of the accused; (b) that act resulting in bodily injury was done with the intention of causing that bodily injury to the deceased; and (c) that bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death (*Virsa Singh v State of Punjab* AIR 1958 SC 465, followed by the Singapore courts in cases such as *Tan Chee Wee v Public Prosecutor* [2004] 1 SLR(R) 479 ("*Tan Chee Wee*") at [43] and *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [61]).

33 "Sufficiency" in this context refers to the high probability of death in the ordinary course of nature (*Rajwant Singh v State of Kerala* AIR 1966 SC 1874 at 1879). The test of whether a bodily injury is sufficient in the ordinary course of nature to cause death is objective – it is not necessary for the accused to have known or intended the potentially fatal consequence of inflicting the bodily injury. It is sufficient that the accused intentionally caused the particular bodily injury inflicted (*Tan Chee Wee* at [42]–[43]). Hence, a fatal act accidentally caused is a defence to a charge of s 300(*c*) murder.

The number of stab wounds inflicted on Yuen

34 The appellant argued that the Judge erred in holding that it was immaterial whether one or more stab wounds had been inflicted on Yuen since a single wound, as compared to five wounds, was more likely to have been accidentally caused. [note: 52] Accordingly, he argued that the Judge should have made a specific finding on this issue in order to determine whether the bodily injury caused to Yuen had been accidentally inflicted.

35 As an abstract argument, there was some force in the appellant's submission. However, we rejected it based on the evidence in this case. The 3 cm Wavy Cut (which was observed by both A/P Lau and Dr Tay) was very severe, and would have caused Yuen a massive loss of blood sufficient in the ordinary course of nature to result in death (see [25] above). We agreed with the Judge that such a deep and severe stab wound could only have been intentionally inflicted with a firm hand intent on bringing the knife towards Yuen's chest. The appellant's account of how Yuen came to be stabbed also showed that he had intended to inflict that stab wound, *viz*, while Yuen was holding the appellant's left hand and was trying to push the knife away, the appellant was trying to pull the knife towards him. Yuen lost the struggle and was stabbed in the process. We were satisfied that the stabbing was intentional and not accidental, and as such, s 300(*c*) *mens rea* was established.

36 For the avoidance of doubt, based on the objective evidence of the five cuts on Yuen's shirt, and given the appellant's account of how the struggle took place, we were certain that Yuen had been stabbed at least five times on his chest. Although A/P Lau only saw one stab-cut when he removed the shirt from Yuen's body in the mortuary, he was careful to state that his observation of the 3 cm Wavy Cut was based on a "naked-eye" inspection. [note: 53] The shirt was then heavily stained with soil, mud and body fluids, and heavily covered with maggots. In view of the state of the shirt and the manner of its inspection by A/P Lau, it was not surprising that the four other cuts, which were all smaller than the 3 cm Wavy Cut (see [23] above), were missed. In this connection, it was also significant that Inspector Daniel Wong, who had the opportunity to see the shirt in both its original and subsequent cleaned-up state (see [22] above), was hesitant to draw any conclusion in respect of the number of cuts on it during his cross-examination, due to the maggot infestation and the lack of proper equipment to closely examine the shirt. [note: 54]

37 In contrast, Dr Tay, whose specific task was to examine the shirt as a forensic scientist, found the five stab-cuts described at [23] above, after the shirt had been cleaned of the dirt and maggots.

His observation of the presence of five stab-cuts was also consistent with the appellant's Third Statement, which suggested that Yuen was stabbed a number of times, when the appellant "pulled the pointed end of the knife in an inward motion towards [Yuen] *a few times*", and that there had been "a few motions of back and forth" of the knife towards Yuen (see [17]–[18] above). There was a faint suggestion by the appellant's counsel that the other four stab-cuts could have been accidentally caused before or in the course of the forensic examination. There was, however, no evidence to support this suggestion, and we were satisfied that this did not occur.

38 In the light of the foregoing, we found that the objective evidence supported a finding that five stab wounds were inflicted on Yuen's chest region during the struggle, and that they were inflicted intentionally.

Issue (b)

39 Before us, the appellant argued that (a) the Judge erred in finding that there was heavy blood loss; and (b) Yuen's death could have been brought about by natural causes, *eg*, sudden cardiac arrest. [note: 55] We rejected these arguments and found that the evidence wholly supported the Judge's conclusion of death caused by extensive loss of blood.

40 Although it was not possible for A/P Lau to pinpoint precisely the time or medical cause of Yuen's death (see [20] above), it was open to the court to look beyond the autopsy findings, and at the totality of the evidence, to determine the cause of death (*Oh Laye Koh v Public Prosecutor* [1994] SGCA 102 at [18] and [20] and *Public Prosecutor v Mohammed Ali bin Johari* [2008] 2 SLR(R) 994 at [71]–[74]).

Heavy bleeding caused by the stab wounds

41 The appellant questioned Dr Tay's failure to conduct a Kastle-Meyer test on the 28 cm by 23 cm stain on the rubber mat to determine whether it was in fact caused by blood. [note: 56] He argued that the pool of liquid leaving behind the stain could have been diluted by other bodily fluids, or the water the appellant had used to clean the taxi at the Canberra Link car park, [note: 57] thus causing the blood loss to appear more extensive than it actually was. We found this argument to be entirely without merit.

42 First, even in the absence of conducting a Kastle-Meyer test, Dr Tay was able to state confidently that the pool of liquid was unlikely to have contained water, since a diluted mixture would have left a distinctly different type of stain from that found on the rubber mat. [note: 58] Second, the 28 cm by 23 cm stain was not the only evidence of extensive blood loss. As mentioned (at [12] above), heavy blood stains, spatters and smears were found on several parts of the taxi, indicating that Yuen had suffered serious bleeding wounds. Third, and most significantly, it was the appellant's own evidence that the struggle between Yuen and himself had resulted in there being "a lot of blood", [note: 59] and that Yuen "was all covered with red colour". [note: 60] Further, the appellant confirmed during cross-examination by the Prosecution that he had not himself sustained any injury during the struggle: [note: 61]

> Q: Okay. Now, Mr Wang [*ie*, the appellant], all this blood in the taxi, whose blood---whose blood was it?
>
> A: Probably uncle's because I was not injured.

In other words, all the blood found in the taxi must have been Yuen's. [note: 62]

Speculative alternative cause of death raised by the appellant

43 We also rejected the appellant's argument that Yuen might have died from sudden cardiac arrest as it was mere speculation. In any event, the Prosecution had produced evidence showing that a search of public hospitals and polyclinics did not reveal that Yuen was known to have had any significant medical condition. [note: 63] Furthermore, no definitive genetic marker accountable for sudden cardiac death was found on the genetic testing of the heart and bone marrow tissue specimens of Yuen's body. [note: 64] There was, on the evidence, no reasonable doubt that Yuen had died from his injuries.

Subsequent abandonment of Yuen in the undergrowth

44 The Prosecution advanced a further argument that, *even if* Yuen was alive but unconscious after being stabbed in the taxi, the appellant's act of leaving Yuen in the forested area ensured that Yuen would shortly but surely die from the loss of blood if not attended to quickly. The Prosecution argued that the appellant's acts of stabbing Yuen and abandoning him were so closely connected that they formed a single transaction. As such, it did not matter if Yuen had died, not as a result of the stab wounds, but due to the appellant's subsequent act of abandoning him, [note: 65] *ie*, the appellant was guilty of s 300(*c*) murder even if there was no strict temporal coincidence of the *actus reus* and *mens rea*. This argument was based on the approach adopted by the Privy Council in *Thabo Meli and others v The Queen* [1954] 1 WLR 228 ("*Thabo Meli*") in order to satisfy the fundamental principle that there must be a concurrence of the *actus reus* and *mens rea* before an accused can be found guilty of a criminal offence. The *Thabo Meli* line of authorities stands for the principle that if two separate acts were done to the victim resulting in his death, those two acts should be treated as part of the same transaction if the accused had a pre-conceived plan to kill the victim even if this intention was not operative at the time the second act was done. Notably, such an intention can be formed on the spot, just before the killing took place (see *Re Thavamani* AIR 1943 Mad 571 ("*Re Thavamani*"), which was referred to in *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 442 ("*Shaiful Edham*")). We will now examine this principle in the context of a s 300(*c*) murder and the facts of this case.

(1) The principle of concurrence of the *actus reus* and *mens rea*

45 It is a fundamental principle of criminal law that there must be a concurrence between the *actus reus* and *mens rea* for an offence to be established. This principle was taken for granted by this court in *Abdul Ra'uf bin Abdul Rahman v Public Prosecutor* [1999] 3 SLR(R) 533 ("*Abdul Ra'uf*") at [28], where the appellant's defence was that he did not know that the drugs were in the car when he drove it across the causeway into Singapore, *ie*, there was no *mens rea* at the time of commission of the *actus reus*. As the court ultimately disbelieved the appellant's assertion that he did not know about the location of the drugs (at [30]–[31] of *Abdul Ra'uf*), the argument on non-concurrence was moot.

46 In an earlier decision in *Muhammad Radi v Public Prosecutor* [1994] 1 SLR(R) 406 ("*Muhammad Radi*"), the accused had intentionally struck the victim's head several times with a stick. After the victim collapsed, the accused dragged her and forcibly pushed her into a crouching position under a kitchen ledge, where she was left abandoned. As the body was badly decomposed by the time it was found, the pathologist could not state conclusively the cause of death. It was also unclear, on the facts, whether the victim was already dead or merely unconscious at the point of abandonment. This

court, using the language of the *Thabo Meli* approach (see the italicised words in the passage below) upheld the conviction of the accused for murder under s 300(*c*) of the Penal Code (Cap 224, 1985 Rev Ed), and explained at [13] as follows:

> [I]t was argued that any injuries that resulted from, or were aggravated by, the [accused's] subsequent acts could not be taken into account for the purposes of s 300(*c*) as he may not have intended to inflict those injuries. Counsel contended that the [accused] did those acts merely because he did not want to be found with the deceased, especially after he had injured her. He had not intended to cause her any further injuries when he concealed and abandoned her. *We were of the view, however, that the [accused's] acts of concealing and abandoning the body of the deceased were so intimately connected with his act of striking the deceased that all the acts must be treated as only one transaction.* This was not a simple case where the [accused] simply fled from the scene without giving any aid to the deceased. The [accused] in the present case took careful and calculated steps to ensure that the deceased would not be easily discovered by any third parties, and left her in that position without taking any further interest in her. [emphasis added]

47 This issue of non-concurrence arose and was addressed more extensively in *Shaiful Edham*, where the appellants attacked the deceased before disposing of what they thought was a corpse into a canal. The medical evidence showed that the deceased was then still alive, and had died from subsequent drowning. This court similarly employed the *Thabo Meli* approach (see passage below in bold italics) and held at [72]–[74] as follows:

> 72 The legal problem posed by the situation such as that which occurred in the present case is that there is no coincidence in time of the *actus reus* and *mens rea* of the offence. The Penal Code is silent on the question and there appear to be no local cases in which the issue has been discussed. Consequently, decisions from other jurisdictions will be of persuasive authority.
>
> 73 The leading case is the Privy Council decision in [*Thabo Meli*], an appeal from the High Court of Basutoland. The facts were that the appellants, in accordance with a preconceived plan, took their victim to a hut and gave him beer so that he became partially intoxicated. They then struck him over the head with a piece of iron. Believing him to be dead, they took his body and rolled it over a low cliff, dressing up the scene to make it look like an accident. In fact, the man was not then dead, it being established from the medical evidence that the final cause of his death was exposure when he was left unconscious at the foot of the cliff. ... Lord Reid, delivering the judgment of the Board, dealt with this argument [of non-concurrence of *actus reus* and *mens rea*] in an oft-quoted passage (at p 374 of the report) as follows:
>
> > The point of law which was raised in this case can be simply stated. It is said that two acts were done: first, the attack in the hut; and, secondly, the placing of the body outside afterwards – and that they were separate acts. It is said that, while the first act was accompanied by *mens rea*, it was not the cause of death; but that the second act, while it was the cause of death, was not accompanied by *mens rea*; and on that ground, it is said that the accused are not guilty of murder, though they may have been guilty of culpable homicide. It is said that the *mens rea* necessary to establish murder is an intention to kill, and that there could be no intention to kill when the accused thought that the man was already dead, so their original intention to kill had ceased before they did the act which caused the man's death. *It appears to their Lordships impossible to divide up what was really one series of acts in this way. There is no doubt that the accused set out to do all these acts in order to achieve their plan, and as parts of their plan; and it is much too refined a ground of judgment to say that because they were under a misapprehension at*

> *one stage and thought that their guilty purpose had been achieved before, in fact, it was achieved, therefore they are to escape the penalties of the law.* … there can be no separation such as that for which the accused contend. Their crime is not reduced from murder to a lesser crime merely because the accused were under some misapprehension for a time during the completion of their criminal plot. …

7 4 ***Under this approach, a series of distinct acts may in some circumstances be regarded as forming part of a larger transaction; and it will suffice if the accused had the necessary mens rea at some point in the transaction, even if it did not coincide precisely in time with the actus reus, the act which caused the death.*** The *Thabo Meli* approach was approved by the English Court of Criminal Appeal in *R v Church* [1966] 1 QB 59. Church was charged with the murder of a woman whose badly injured body was found in the River Ouse. According to him, he had taken her to his van for sexual purposes, was mocked by her for failing to satisfy her, and, in the ensuing fight, knocked her semi-conscious. He tried to rouse her for about half an hour and then, thinking that she was dead, was seized by panic and threw her into the nearby river. The woman died from drowning. Church was charged with murder but, upon the trial judge's direction to the jury that they could not convict him for murder unless it was proved that he knew that the victim was alive when he threw her into the river, was convicted of manslaughter and sentenced to 15 years' imprisonment. The Court of Criminal Appeal dismissed his appeal against conviction and sentence. Edmund Davies J remarked of the direction (at p 67 of the report, citing *Thabo Meli v R* in support) that it was:

> unduly benevolent to the appellant and that the jury should have been told that it was still open to them to convict of murder, notwithstanding that the appellant may have thought his blows and attempt at strangulation had actually produced death when he threw the body into the river, if they regarded the appellant's behaviour from the moment he first struck her to the moment he threw her into the river as a series of acts designed to cause death or grievous bodily harm. …

[emphasis in italics in original, emphasis added in bold italics]

48 The court in *Shaiful Edham* then examined the Indian decisions on this point and found them to be conflicting. The first group of Indian cases consisted of decisions (some of them pre-dating *Thabo Meli*) which adopted the same reasoning as that in *Thabo Meli*. In *Kaliappa Goundan v Emperor* AIR 1933 Mad 798 ("*Kaliappa Goundan*") and *King-Emperor v Nehal Mahto* (1939) 18 Pat 485 ("*Nehal Mahto*"), there was a preconceived plan to kill the victim and dispose of the body, and acts done in pursuance of such plan constituted one transaction such that it sufficed for there to have been the requisite *mens rea* at some point of the transaction. In *Lingaraj Das v Emperor* AIR 1945 Pat 470, the Patna High Court extended the one transaction principle to a case where there was a plan to kill, followed by a subsequent intention to dispose of the body in the mistaken belief that death had ensued. The principle was further extended in *Re Thavamani* to a case where the intention to cause death was formed on the spur of the moment.

49 The second group of Indian cases referred to in *Shaiful Edham* subscribed to a strict application of the concurrence principle in preference to the *Thabo Meli* approach, *viz*, *Queen-Empress v Khandu Valad Bhavani* (1890) 15 Bom 194 ("*Khandu Valad Bhavani*") and *Palani Goundan v Emperor* (1919) 42 Mad 547 (FB) ("*Palani Goundan*"). In *Palani Goundan*, the deceased was struck and then, seemingly dead, hanged by the accused to create the false impression of suicide. Wallis CJ held in *Palani Goundan* at 557–558 that:

> [T]he intention demanded by [s 299 of the Indian Penal Code] must stand in some relation to a

person who either is alive, or who is believed by the accused to be alive. ... the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. *It follows that a man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body*. [emphasis added]

50 The concurrence principle was similarly emphasised in *Khandu Valad Bhavani*. The accused struck the deceased with the intention of killing him. Mistakenly believing the accused to have died, the accused then set fire to the deceased's hut thereby burning him to death. The Bombay High Court held by a majority that the accused was only guilty of an attempt to murder under s 307 of the Indian Penal Code. Birdwood J (for the majority) said at 199 of the report:

> The accused admits that he struck the deceased with the intention of killing him. In intention, therefore, he was a murderer. But on the evidence, such as it is, it must be found that the striking did not amount to murder. It was, however, an attempt to murder. The accused must also, I think, be taken to have set fire to the shed in order to remove evidence of the murder which he thought he had committed, though he himself does not give any such explanation of his conduct. By setting fire to the shed, however, he actually caused death; and the question in this case, arising with reference to the definition contained in section 299 of the Indian Penal Code, is whether he set fire to the shed with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death or with the knowledge that death was likely to be caused by the act. *As I am of opinion that the accused thought, when he set fire to the house, that the deceased was already dead, I cannot hold that the act of setting fire to the shed by which the death was caused was done with such intent or knowledge as is contemplated in section 299 of the Indian Penal Code. It is not as if the accused had intended, by setting fire to the shed, to make the deceased's death certain*. I do not believe that that was his intention. If that had been the case, I should have no difficulty in upholding the conviction. [emphasis added]

51 Sargent CJ agreed with Birdwood J that "as the accused undoubtedly believed he had already killed his victim, there would be a difficulty in regarding what occurred from first to last as one continuous act done with the intention of killing the deceased", (*Khandu Valad Bhavani* at 201).

52 Parsons J, however, dissented on the ground that the accused had an intention to cause death, and he did cause the death of the victim by two separate acts, which were "*so closely following upon and so intimately connected with each other that they cannot be separated and assigned the one to one intention and the other to another*, but must both be ascribed to the original intention which prompted the commission of those acts and without which neither would have been done" [emphasis added], (*Khandu Valad Bhavani* at 200, endorsed in *Kaliappa Goundan* at 802 and *Nehal Mahto* at 495).

53 Significantly, in both *Khandu Valad Bhavani* and *Palani Goundan*, the initial acts of striking the deceased did not, and were not likely in any event to, result in death. On the facts of those two cases, the medical evidence showed that death was caused, and not merely accelerated, by the subsequent burning (*Khandu Valad Bhavani* at 198) and hanging (*Palani Goundan* at 556). As Birdwood and Candy JJ observed at *Khandu Valad Bhavani* at 197:

> If the blows struck by the accused were not likely to cause the deceased's death, and did not, as a matter of fact, cause his death, but only stunned him, then in striking the blows he would not have committed murder, but would have been guilty only of an attempt to murder. Whether by striking the deceased or burning him, he certainly caused his death; but if the death was due only to the burning and not to the blows, it would be a question whether the act which really

> caused death was done with such intention or knowledge as is contemplated in the definition of "culpable homicide" given in section 299 of the Indian Penal Code. If the burning was the cause of death and the hut was set fire to with the same intention with which the blows were struck, then there could be no question as to the guilt of the accused. He would in that case be guilty of murder. But if the accused really believed that the deceased was already dead when the hut was set fire to, then apparently it would be necessary for us to hold that he could neither have intended by such burning to kill him, nor known that he would be likely to kill him. *If, however, the injuries inflicted with a stick were really of a dangerous kind and likely to cause death, then by setting fire to the hut, the accused would merely have accelerated the deceased's death, which in that case could be rightly attributed to the blows inflicted with the avowed intention of killing the deceased.* [emphasis added]

54 After examining the Indian decisions on this issue, this court said in *Shaiful Edham* at [82] as follows:

> We venture to draw the following conclusions from the authorities. First, where there is a pre-conceived plan not only to kill the deceased but also to dispose of the body, the *Thabo Meli* approach should be applied: *Kaliappa Goundan* and *Nehal Mahto*. This would also be the case where there was a preconceived plan to kill, even though the decision as to the method of disposal of the body was only arrived at later: *Lingaraj Das*. Second, the *Thabo Meli* approach should also be applied where there is a clear intention to kill, even if it is formed on the spur of the moment: [*Re Thavamani*]. Third, where, however, there is only an intention to inflict bodily injury under s 299 limb 2 and s 300(*c*), or knowledge under s 299 limb 3 and s 300(*d*), it is unclear if the *Thabo Meli* approach is appropriate. We would prefer not to express an opinion on this point, it being unnecessary to the disposal of this appeal, but would content ourselves with noting that *Church* [*ie*, *R v Church* [1996] 1 QB 59] suggests a broad application of the *Thabo Meli* approach. It may be, however, that it is not as strong an authority as the Indian cases.

55 On the facts of *Shaiful Edham*, this court found the appellants guilty of murder as the killing was done in pursuance of a preconceived plan to kill the victim. The court further found that even if the appellants genuinely believed the deceased to be dead when they threw her into the water, she was already on the brink of death (based on the forensic evidence) and would have died eventually from loss of blood from the neck wounds in any event. The drowning was therefore not an effective intervening cause of death, but an accretive or secondary cause of death, *ie*, it was not a case "where the second cause [was] so overwhelming as to make the original wound merely part of the history", such that it could be said that the death did not flow from the (initial) wound, (see *R v Smith* [1959] 2 QB 623 at 628). All the subsequent act of drowning did was to accelerate the victim's death.

(2) The relevance of the *Thabo Meli* approach to a s 300(*c*) murder

56 The evidence in the present case clearly showed that the appellant had a preconceived plan to rob Yuen and that he brought with him a knife to threaten the victim in order to accomplish his purpose. There was insufficient evidence to show that the plan included an intention to kill Yuen and to abandon his body in the undergrowth to conceal his criminal acts. What the evidence showed, and this was what the Judge had found and which we affirmed, was that the appellant stabbed Yuen in the course of the struggle, and the stabbing caused Yuen's death.

57 The nature and the sequence of events of the struggle as recounted by the appellant himself (see [17]–[18] above) showed that when the appellant stabbed Yuen, he had intended to do so. If he had no such intention, it would have been easy for him to push the knife away from Yuen's body

rather than pull it towards the body. While there was no intention to cause death, there was an intention to stab Yuen and one of those stab wounds, *viz*, the 3 cm Wavy Cut, had a depth which was so deep that it was sufficient in the ordinary course of nature to cause death (see [25] above). Yuen died from the severe blood loss from his stab wounds. We were prepared to find that the appellant's decision to abandon Yuen's body in the undergrowth to avoid early detection of his offence was only formed after Yuen had been stabbed and had collapsed.

58 The appellant's stabbing and abandoning of Yuen's body in the undergrowth were separate and distinct physical acts which were done sequentially. Since, in our view, there was neither a preconceived plan nor a spontaneous intention to kill Yuen and to conceal his body, the *Thabo Meli* approach (which was followed in *Shaiful Edham*) would not be applicable. If the court were to accept the appellant's evidence that the stabbing of Yuen was accidental, the appellant ought to be acquitted on the basis of the non-concurrence principle. If the stabbing of Yuen was not accidental, then the appellant's belief that Yuen was dead when he abandoned Yuen in the undergrowth would not have made any difference to his criminal liability under s 300(*c*), if the stab wound was sufficient in the ordinary course of nature to cause death (as the Judge had found to be the case and which finding we affirmed). If, however, the initial injury caused by the appellant was not sufficient to cause death, and Yuen had died of exposure to elements after being abandoned, then there would be no strict temporal coincidence of *mens rea* and *actus reus* because at the point of abandonment, the appellant thought that Yuen was already dead.

59 Even then, on the facts of this case, it would not be necessary to apply the *Thabo Meli* approach in order to find a concurrence of the *actus reus* and *mens rea* because the abandonment of Yuen's body in the undergrowth would merely have been a secondary cause of death as, on the basis of the forensic evidence, Yuen would have died from loss of blood even if he had been left in the taxi. In terms of causation of death, we would say that there was no break in the chain of causation by the subsequent act of abandonment. The real cause of death was, in our view, the massive loss of blood from the stab wounds.

60 We pause, at this juncture, to observe that the intention to inflict the bodily injury actually inflicted (which is sufficient in the ordinary course of nature to cause death) is crucial in proving a s 300(*c*) murder charge. In such a situation, even if the accused had inflicted another fatal injury to the victim, after the infliction of the initial bodily injury, it would have made no difference to his criminal liability under s 300(*c*) *if* the initial injury would, in any event, have caused death in the ordinary course of nature. An accretive or secondary cause of death would not operate to displace the primary cause of death in such a case. Indeed, as a matter of logic, even if the appellant had tried to save Yuen by conveying Yuen to a hospital, but Yuen had died on the way, the appellant would still have been guilty of s 300(*c*) murder because the ingredients of the offence would have been satisfied.

61 To reiterate, it was not necessary for us to rely on the *Thabo Meli* approach in order to satisfy the fundamental principle that there must be a concurrence of the *actus reus* and *mens rea*, as the basis to uphold the appellant's conviction for murder under s 300(*c*). It was sufficient that the elements of s 300(*c*) were satisfied, as they were in the present case. In our view, it is inherent in an offence under s 300(*c*), as statutorily defined, that there will always be a concurrence of the *actus reus* and *mens rea.* The *mens rea* is the *intention* to inflict the particular bodily injury whereas the *actus reus* is the actual infliction of that bodily injury. The intention to injure and the actual bodily injury caused coalesce in the single act of inflicting the injury. If the bodily injury so caused is sufficient in the ordinary course of nature to cause death, murder has been committed under s 300*(c*) as a matter of course. Subsequent or additional *actus reus* will not displace the consequence which flows from the initial *actus reus*. This was precisely the case here. There was concurrence of the

actus reus and *mens rea* when the appellant intentionally stabbed Yuen and caused his death in the ordinary course of nature, through the massive loss of blood from the stab wounds.

Conclusion

62 For the reasons stated above, we affirmed the Judge's decision and dismissed the appeal.

[note: 1] Record of Proceedings ("RP"), vol. 4 at pp 1 – 2.

[note: 2] Petition of Appeal (30 April 2012) ("Petition of Appeal") at p 3.

[note: 3] RP, vol. 3, Notes of Evidence ("NE") (Day 7, 16 March 2011) at p 12 line 15.

[note: 4] Appellant's Skeletal Submissions (26 June 2012) ("Appellant's Skeletal Submissions") at paras 9, 11 and 38.

[note: 5] RP, vol. 3, NE (Day 7, 16 March 2011) at p 22 lines 6 – 23.

[note: 6] *Ibid* at p 23 line 15 – p 25 line 2.

[note: 7] *Ibid* at p 25 lines 3 – 18.

[note: 8] RP, vol. 4 at p 408 at para 62.

[note: 9] RP, vol. 3, NE (Day 7, 16 March 2011) at p 25 lines 19 – 20.

[note: 10] RP, vol. 4 at p 408 at para 63.

[note: 11] *Ibid*.

[note: 12] RP, vol. 3, NE (Day 7, 16 March 2011) at p 28 line 32.

[note: 13] *Ibid* at p 30 lines 7 – 18.

[note: 14] RP, vol. 4 at p 410 at para 63.

[note: 15] Appellant's Skeletal Submissions at paras 43 and 45.

[note: 16] Appellant's Skeletal Submissions at para 44; Respondent's Skeletal Submissions (22 June 2012) ("Respondent's Skeletal Submissions") at paras 6 and 20.

[note: 17] Appellant's Skeletal Submissions at para 44; Respondent's Skeletal Submissions at para 6.

[note: 18] RP, vol. 3, NE (Day 8, 17 March 2011) at p 11 lines 7 – 15.

[note: 19] RP, vol. 4 at p 412 at para 65.

[note: 20] *Ibid* at p 264i.

[note: 21] RP, vol. 3, NE (Day 9, 23 March 2011) at p 15 lines 29 – 32.

[note: 22] RP, vol. 4 at p 412 at para 65.

[note: 23] *Ibid*.

[note: 24] *Ibid* at pp 542 – 543.

[note: 25] *Ibid* at p 282.

[note: 26] *Ibid* at p 264h.

[note: 27] *Ibid*.

[note: 28] RP, vol. 3, NE (Day 8, 17 March 2011) at p 28 lines 3 – 8.

[note: 29] *Ibid* at p 36 lines 7 – 11.

[note: 30] RP, vol. 4 at pp 386 – 393.

[note: 31] RP, vol. 3, NE (Day 8, 17 March 2011) at p 32 lines 29 – 31.

[note: 32] RP, vol. 4 at p 377.

[note: 33] RP, vol. 3, NE (Day 8, 17 March 2011) at p 39 lines 24 – 27.

[note: 34] RP, vol. 4 at pp 395 – 396 at paras 43 and 44.

[note: 35] *Ibid* at pp 409 – 411 at paras 63 and 64.

[note: 36] *Ibid* at pp 416 – 418.

[note: 37] *Ibid* at p 422.

[note: 38] *Ibid* at p 292.

[note: 39] RP, vol. 4 at p 295.

[note: 40] *Ibid*.

[note: 41] RP, vol. 4 at pp 777 – 778, 783 and 787.

[note: 42] *Ibid* at pp 856 and 858.

[note: 43] *Ibid* at p 293

[note: 44] RP, vol. 2, NE (Day 6, 15 March 2011) at pp 30 – 31.

[note: 45] RP, vol. 4 at p 267.

[note: 46] *Ibid*.

[note: 47] RP, vol. 2, NE (Day 4, 11 March 2011) at p 87 lines 11 – 13; RP, vol. 2, NE (Day 5, 14 March 2011) at p 42 lines 2 – 5; RP, vol. 2, NE (Day 5, 14 March 2011) at p 63 lines 12 – 15.

[note: 48] RP, vol. 4 at p 268.

[note: 49] RP, vol. 2, NE (Day 5, 14 March 2011) at p 40 lines 25 – 31.

[note: 50] RP, vol. 4 at pp 856 and 858.

[note: 51] Appellant's Skeletal Submissions at paras 215 to 232.

[note: 52] Appellant's Skeletal Submissions at paras 160 to 202; Appellant's Reply Submissions (2 July 2012) ("Appellant's Reply Submissions") at para 59.

[note: 53] RP, vol. 1, NE (Day 3, 10 March 2011) at p 30 lines 29 – 32.

[note: 54] RP, vol. 2, NE (Day 6, 15 March 2011) at p 26 line 29 – p 27 line 15 and p 29 line 19 – p 32 line 18.

[note: 55] Petition of Appeal at pp 5 – 6; Appellant's Skeletal Submissions at paras 104 to 158.

[note: 56] Appellant's Skeletal Submissions at paras 136 to 142; Appellant's Reply Submissions at paras 43 to 45.

[note: 57] RP, vol. 4 at p 829.

[note: 58] RP, vol. 2, NE (Day 5, 14 March 2011) at p 17 lines 7 – 23.

[note: 59] RP, vol. 4 at p 410 at para 64.

[note: 60] *Ibid* at p 417 at A9.

[note: 61] RP, vol. 3, NE (Day 9, 23 March 2011) at p 7 lines 28 – 30.

[note: 62] *Ibid* at p 13 lines 27 – 29.

[note: 63] RP, vol. 4 at p 295; RP, vol. 1, NE (Day 3, 10 March 2011) at p 17 line 25 – p 18 line 3.

[note: 64] *Ibid* at p 295; RP, vol. 1, NE (Day 3, 10 March 2011) at p 16 line 31 – p 17 line 24.

[note: 65] Respondent's Skeletal Submissions at paras 47 and 48.