IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 71

Criminal Case No 51 of 2015

Between

Public Prosecutor

And

Govindasamy s/o Nallaiah

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Murder]

[Criminal Law] — [Offences] — [Culpable Homicide]

Version No 2: 27 Oct 2020 (22:39 hrs)

CONTENTS

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Public Prosecutor
v
Govindasamy s/o Nallaiah

[2016] SGHC 71

High Court — Criminal Case No 51 of 2015
Hoo Sheau Peng JC
20–23, 27 October; 3–4, 11 November 2015; 16 February, 1 April 2016

19 April 2016

Hoo Sheau Peng JC:

Introduction

1 On the morning of 10 August 2011, a fire broke out at the premises of the law firm B Rengarajoo and Associates ("the office"), which was located at the sixth floor of the Afro-Asia Building along Robinson Road. The fire gutted the office, and led to the tragic death of Mdm Low Foong Meng ("Mdm Low"), who was the wife of Mr Rengarajoo s/o Rengasamy Belasamy ("Mr Rengarajoo"). It was common ground that the fire was started by the accused, Govindasamy s/o Nallaiah ("the Accused"), and that he had done so after he had assaulted Mdm Low and rendered her unconscious.

2 Subsequently, the Accused was charged with murder within the meaning of s 300(*d*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The Accused claimed trial to the charge. Before this court, the issue

was whether the Accused was guilty of murder, the most serious offence in our penal laws, or of a less serious form of homicide.

3 At the conclusion of the trial, I found that it had not been proved beyond reasonable doubt that the Accused was guilty of murder. However, I concluded that the facts which were proved were sufficient to justify a conviction for the lesser offence of culpable homicide not amounting to murder under s 299 of the Penal Code. Therefore, I exercised the power granted to me under s 141(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to convict the Accused of the following lesser offence:

> That you, [the Accused], on 10 August 2011, sometime between 9.48 am and 11.54 am, at unit #06-26 of No. 63 Robinson Road, Afro Asia Building, Singapore ("the unit"), did cause the death of one Low Foong Meng (female/55 years old) by starting a fire in the said unit with the knowledge that by such act you were likely to cause death, and you have thereby committed the offence of culpable homicide not amounting to murder which is punishable under s 304(b) of the Penal Code (Chapter 224, 2008 Rev Ed).

4 Thereafter, I sentenced the Accused to 10 years of imprisonment, backdated to 11 August 2011. This is the maximum term of imprisonment provided under s 304(*b*) of the Penal Code. The Accused was 71 years of age. Pursuant to s 325 of the CPC, he was not liable for caning. None was imposed. I now provide my detailed reasons for the conviction and sentence.

The Prosecution's case

5 I begin with the Prosecution's evidence. In total, there were 58 witnesses and 246 exhibits. Much of the evidence was not disputed.

Version No 2: 27 Oct 2020 (22:39 hrs)

Previous brush with the law

6 In 1965, the Accused joined the civil service. Sometime in 2002, he was investigated for corruption. The Accused engaged Mr Rengarajoo to act as his lawyer, and they agreed on a fee of $25,000. Mr Rengarajoo prepared a promissory note, which was duly signed by two of the Accused's children, Ms Letchmi Ghandi d/o Govindasamy ("Ms Letchmi") and Mr Ramanathan s/o Govindasamy ("Mr Ramanathan"), who each agreed to stand as guarantors for the legal fees owed by the Accused. Mr Rengarajoo represented the Accused at the trial. Eventually, the Accused was convicted and sentenced to a term of imprisonment. Following this, the Accused was dismissed from the civil service, lost his pension, and began working as a taxi driver. He also sold his house at a loss, and was made a bankrupt.

Outstanding legal fees

7 The Accused did not pay his legal fees. Mr Rengarajoo commenced legal proceedings to recover the unpaid legal fees. In 2005, he obtained a default judgment against the Accused and his children. In 2010, Mr Rengarajoo began enforcement proceedings against the Accused's children. In late 2010, he served a statutory demand on Ms Letchmi. In July 2011, he took out a writ of seizure and sale against Mr Ramanathan.

8 Mr Ramanathan visited Mr Rengarajoo at the office, and asked for time to settle the matter. He was not successful, and was told to return on 1 August 2011. Mr Ramanathan told the Accused what had transpired. The Accused said that he would see Mr Rengarajoo on his own.

9 On 1 August 2011, the Accused went to the office alone to remonstrate with Mr Rengarajoo, but received a similarly negative response. On that

Version No 2: 27 Oct 2020 (22:39 hrs)

occasion, for the first time, the Accused saw Mdm Low, whom he thought was a lawyer and a partner in Mr Rengarajoo's firm. Mdm Low informed the Accused not to waste any more time, and to arrange for payment to be made.

10 On 3 August 2011, Mr Ramanathan received another letter informing him that if payment were not made by 10 August 2011, the writ of seizure and sale against the property in his home would be enforced. On 8 August 2011, the Accused made another visit to Mr Rengarajoo's office to negotiate an extension of time for payment of the legal fees. Once again, Mdm Low told him not to waste any more time, and to arrange for payment to be made.

Events on 10 August 2011

11 On 10 August 2011, the Accused parked his taxi in the vicinity of the Afro-Asia Building. As shown in the CCTV footages captured at the Afro-Asia Building, the Accused entered the building at 8.37am. He was carrying a haversack. The Accused told a security guard that he was there to see a lawyer. The Accused then made multiple calls to the office, finally speaking with Mdm Low and identifying himself as a potential client who wished to sell his house. By the time the Accused entered the office, it was 9.48am.

12 At about 9.50am, Mr Marco Jap ("Mr Jap"), a deliveryman, arrived at the office. As the door was unlocked, he entered the office and saw the Accused walking out from a cubicle at the far end. The Accused was holding a bicycle chain which was wrapped in a clear blue plastic sheath, at the end of which, a padlock was attached ("the chain and padlock"). Mr Jap did not see anyone else. Mr Jap informed the Accused that he was making a delivery. The Accused instructed him to wait outside for 10 minutes because "the lady is not here". Mr Jap left the office, and closed the door. While he was waiting outside, Mr Jap heard three distinct "thud" sounds, "as if someone had used a

Version No 2: 27 Oct 2020 (22:39 hrs)

hard object to hit against another object, like a table or chair". Then, he detected a "strong smell" emanating from the office. After that, he "heard a female voice screaming loudly inside the office… two or three loud screams and after that it was all quiet."

13 The smell became stronger, and Mr Jap noticed smoke coming out from the sides of the wooden door. Alarmed, he proceeded to get help. At 9.55am, Mr Jap exited the lift at the ground floor and informed a security guard of what he had seen. While this conversation was taking place, the Accused walked out of the building. By then, the fire alarm had gone off. Two security guards proceeded to the office, and saw smoke coming out of it. One of them opened the door of the office, and found it unlocked. He saw a fire inside but soon retreated and left the office because of the heat.

14 At about 10.10am, Mr Rengarajoo arrived at the Afro-Asia Building. He overheard security personnel talking about the office. Concerned, he proceeded to the office. The door was unlocked. He entered the office, but was unable to breathe normally due to the presence of smoke. He shouted for Mdm Low to leave the office, and he heard a single loud scream before she fell silent. The crowd outside the office urged him to leave. Perceiving that it was too dangerous for him to remain, he left. Officers from the Singapore Civil Defence Force ("SCDF") soon attended at the scene and proceeded to put the fire out. The fire fighters found Mdm Low at the back of the office, within one of the cubicles in the office. She was pronounced dead at 11.54am.

15 Meanwhile, the Accused returned to his taxi and drove off. Subsequently, he disposed of the haversack, which contained, *inter alia*, the chain and padlock, and other personal effects into a canal. At 10.50pm that night, the Accused was arrested at his home. Following the arrest, the Accused

Version No 2: 27 Oct 2020 (22:39 hrs)

brought the police to the shop where he had purchased the chain and padlock. A similar set was produced at the trial as an exhibit.

Plan of the office

16 To facilitate understanding of the events of 10 August 2011, I provide a description of the scene. The office was shaped as an "L", with two separate sections. The first section (which was slightly longer) was an entranceway at the end of which was the door to a room used by Mr Rengarajoo. Immediately outside this door were two wooden tables, the second of which was referred to during the trial as "the secretary's table". This also marked the start of the second section of the office (the shorter arm of the "L"). In the middle of this second section was a photocopying machine, which was placed next to the pantry. There were two cubicles at the far end of the office. Mdm Low was found within one of those cubicles.

Assessment of the fire and analysis of samples

17 Major Koh Chee Hian ("Major Koh") of the Fire Investigation Unit of the SCDF conducted an investigation into the fire and prepared a report. In the fire investigation report, he noted that the entire unit had sustained extensive fire damage, with the walls and ceiling of the unit displaying obvious signs of heat and smoke damage. He concluded that the fire had originated from a single point, being the area outside Mr Rengarajoo's room, around where the secretary's table was placed. He reached this conclusion because it was the area that sustained the greatest fire damage, as the partitions there had been completely consumed by the fire whereas those at the pantry, though charred, still stood. In his assessment, the fire had been started deliberately and the papers outside Mr Rengarajoo's office may have served as the fuel for the fire.

Version No 2: 27 Oct 2020 (22:39 hrs)

18 Major Koh also testified that he did not find any "trailers", which he explained were trails of ignitable liquid substances in the office. Four samples were also collected from the office. The first two samples were taken from the area around the secretary's table, and the second two were taken from the pantry. Tests were performed on these samples by Dr Yeo Wee Chuan ("Dr Yeo"), a Senior Forensic Scientist from the Health Sciences Authority ("HSA"), and substances such as naphthalene, toluene, 2-butoxyethanol and butyl acetate were found. Major Koh explained that naphthalene is commonly found in insecticides, repellents and antiseptics, while the other substances are commonly found in cleaning agents, thinners and lacquers. He concluded that it was possible that these substances could have been "inherently present" in the area instead of having been introduced into the office pursuant to a deliberate act of incendiarism.

19 Samples were also taken from the Accused's taxi and sent to Dr Yeo for testing. Dr Yeo reported that he could find no ignitable liquid residues on any of these samples save for two. However, in those cases, the substances detected may have been inherently present in the materials. Swabs were also taken from the fingernails and hands of the Accused. Ignitable liquid residues and soot were not detected in these swabs.

Autopsy

20 An autopsy was performed by Associate Professor Gilbert Lau ("Assoc Prof Lau"), a Senior Consultant Forensic Pathologist at the Forensic Medicine Division, HSA, and an autopsy report was prepared. Assoc Prof Lau observed that there was a prominent layer of soot along Mdm Low's airways and the blood carboxyhaemoglobin level in her blood was 63%. On this basis, he opined that Mdm Low was alive at the time the fire was started. He assessed

Version No 2: 27 Oct 2020 (22:39 hrs)

that the cause of death was "a combination of inhalation of fire fumes and extensive severe burns".

21 Assoc Prof Lau also noted that there were five distinct shallow fractures of the outer table (*ie*, the outer bony layer) of Mdm Low's skull. The first was a linear fracture; the second and fourth were described as "wedge-shaped" fractures; the third was a "shallow, oval indentation"; while the last was a "slightly depressed fracture". None of these fractures were particularly large, with the largest (the fourth) measuring 1.4 by 0.4cm. He further noted that these fractures were accompanied by minimal subdural haemorrhage, mild acute subdural subarachnoid haemorrhage, and a small cerebral contusion. He opined that these injuries were unlikely to have been fatal but could have rendered Mdm Low unconscious.

22 Additionally, Assoc Prof Lau noted that there were three other external injuries, which were:

(a) An incised wound at the back of Mdm Low's left armpit.

(b) An incised wound at Mdm Low's elbow which "neatly and cleanly" severed the olecranon process (*ie*, the bony tip of the elbow).

(c) An incised wound across the tip of Mdm Low's left middle finger which resulted in the near dismemberment of the tip of the finger.

23 According to Assoc Prof Lau, the three incised wounds were consistent with defensive injuries inflicted with a sharp object. In particular, the incised wound at the olecranon process suggested that a heavy cutting instrument (such as a cleaver) had been used. When asked, he stated that he was of the opinion that the three incised wounds could not have been caused by the chain

Version No 2: 27 Oct 2020 (22:39 hrs)

and padlock. However, he accepted that the five shallow fractures could have been caused by the same heavy cutting instrument, or by a blunt object such as the chain and padlock.

The Accused's statements

24 Finally, the Prosecution relied on eight statements which were recorded from the Accused in the course of investigations (collectively referred to as "the Accused's statements"), all of which were admitted without any challenge as to their voluntariness. One was a statement recorded at 11.50am on 11 August 2011 pursuant to s 23 of the CPC ("the cautioned statement") while the remaining seven statements were recorded pursuant to s 22 of the CPC between 1.35am on 11 August 2011 and 6.00pm on 18 August 2011.

25 In the Accused's statements, he provided fairly consistent accounts of the critical events which took place in the office on 10 August 2011. The broad chronology was set out in the cautioned statement. The Accused explained that he went to the office and pleaded profusely with Mdm Low for forbearance. However, she did not listen, and said that she would take out bankruptcy proceedings against his children the next day. The Accused explained that he was overcome with worry for his children and "could not think straight at that time". He took the chain and hit Mdm Low's head "out of anger" and because he was "so depressed". This caused Mdm Low to faint. He then saw his file on the secretary's table and a disposable lighter on another table. He took the lighter and used it to set the file alight. When the fire alarm sounded, he left the office.

26 In the second long statement recorded on 13 August 2011 at 11.50am, the Accused elaborated on how he hit Mdm Low and came to set the fire. He

Version No 2: 27 Oct 2020 (22:39 hrs)

stated that he pleaded for his children because they had been civil servants for many years, and he did not wish for them to be dismissed from the civil service, as he thought they might if they were financially embarrassed. When Mdm Low ignored his "repeated pleas", he felt angry. He took out the chain and padlock from his haversack, and swung them in a downwards manner toward her head. He hit her at least three times on her head. After the third hit, she lay motionless on the floor beside the photocopier. He then searched the secretary's table and found his case file. At that point, he was interrupted by Mr Jap. He told Mr Jap to return in 10 minutes. After Mr Jap left the office, the Accused saw the lighter, and decided to burn the file. He took out a towel from his haversack, set fire on it, and then placed it on his file. However, the papers caught fire, and the fire became bigger quickly. He left the office when the fire alarm went off.

The Prosecution's narrative

27 The Prosecution submitted that the version of events which was most consistent with the evidence was this. The Accused was determined to settle the fees dispute once and for all. To that end, he was prepared to use violence. For this reason, he arrived at the Afro-Asia Building carrying a heavy cutting instrument (like a cleaver) and a chain and padlock, both of which were eventually used in the assault. While speaking to Mdm Low on the subject of the fees dispute, he grew incensed and assaulted her. While it was not entirely clear from the evidence, the Prosecution submitted that that the heavy cutting instrument was used first. Following the initial assault, which took place at the far end of the office, Mdm Low fell to the floor and lost unconscious.

28 The Accused was then interrupted by the appearance of Mr Jap. After telling the latter to wait outside, the Accused began searching for his file.

Version No 2: 27 Oct 2020 (22:39 hrs)

While Mr Jap waited outside, the Accused assaulted Mdm Low several times with the chain and padlock while she was unconscious on the floor. These were the "thuds" heard by Mr Jap. Due to Mr Jap's sudden appearance, the Accused did not have sufficient time to locate his file. For this reason, he decided to burn all the files on the secretary's table, with the intention that his file would also be consumed in the conflagration. At one point, the Prosecution went so far as to suggest that the Accused "may have even intended to burn down the whole office". To that end, he used a lighter he had brought along with him and lit some of the papers on the secretary's table. Even though they do not definitively make this a part of their case, the Prosecution also suggested that there "remained the possibility that the Accused had used an accelerant" but that no residues were left behind.

29 The Accused watched the fire grow, and saw it spread quickly to consume all the papers on the table. Throughout this whole process, the well-being of Mdm Low was never on his mind. He left the office without checking on Mdm Low or informing anyone that she was there. This, the Prosecution said, revealed "blatant and callous disregard" for her life.

30 In these circumstances, the Prosecution's case was that "the accused's act of setting the fire in the office after rendering the deceased unconscious and incapacitated inside the office was an act which he knew was so imminently dangerous that it must in all probability cause death." Therefore, he was guilty of murder.

The Defence's case

31 I turn next to the Defence's case. The Defence agreed with the broad outline of events as presented by the Prosecution: the Accused assaulted Mdm Low, knocked her out, started the fire while she was unconscious, left soon

Version No 2: 27 Oct 2020 (22:39 hrs)

after the fire was started, and Mdm Low eventually succumbed to the smoke and injuries caused by the fire. However, the Defence argued that the Accused's act in starting the fire, though grave, was not of such a quality of dangerousness so as to attract liability for murder. Further, the Accused did not know that death would be a certainty. The Defence argued that the Accused ought to be convicted of one of the less serious forms of homicide. There were two witnesses for the Defence, being the Accused and Dr Johan Duflou ("Dr Duflou"), a specialist forensic pathologist based in Australia. I will set out their respective testimonies in turn.

The Accused's evidence

32 The Accused provided an account which was largely consistent with those which he gave in his statements. On 10 August 2011, the Accused picked up a passenger who wished to travel to Tanjong Pagar. After she alighted, he decided to go to the office located nearby, so as to settle the matter of the outstanding legal fees. He carried with him a haversack which contained his personal effects, such as a towel, a change of clothes and toiletries. The chain and padlock were also inside his haversack. He explained that he would use the chain and padlock to secure his steering wheel at the end of every work day, and he would place them in his haversack when not in use.

33 The Accused then explained his entry into the office, and his exchange with Mdm Low, which were broadly similar to the events described in [11] and [25] above. Overcome with anger at Mdm Low's threat to commence bankruptcy proceedings against his children, he assaulted Mdm Low between three to five times on the head with the chain and padlock. This assault took place at the area in front of the photocopying machine. Between the blows, Mdm Low raised both her arms and tried to defend herself. She also retreated

Version No 2: 27 Oct 2020 (22:39 hrs)

further into the office, eventually ending up at the area in front of one of the cubicles. After the final blow, Mdm Low fell and lay motionless, with half her body within the cubicle and half outside. The Accused denied having brought a heavy cutting instrument with him, and strenuously denied inflicting any of the incised wounds. He testified that he had only hit Mdm Low on the head with the chain and padlock. He had no idea how she might have sustained the incised wounds.

34 The Accused then walked to the secretary's table and searched for his file. He managed to find it. At this point, Mr Jap came into the room and saw him carrying the chain and padlock. The Accused informed Mr Jap to come back 10 minutes later. Turning his attention back to the file, the Accused was once again overcome with rage as he saw it as the object which had caused him and his family so much stress. He lashed out by swinging the chain and padlock, making contact with the file which was on the secretary's table, producing the sounds which Mr Jap had heard. As he picked up the file, the Accused noticed that there was a lighter on the table beside the sofa. This was when he formed the intention of burning his file. He first tried to use the lighter twice to light the file, but it did not catch. He then took his face towel from the haversack and set it alight with the lighter before placing the burning towel on top of the file. The file soon caught fire and the fire quickly spread to the other papers on the table.

35 The fire alarm went off before long. The Accused left, thinking that help would soon arrive and that, in any event, the sprinklers would soon come on to put out the fire.

Version No 2: 27 Oct 2020 (22:39 hrs)

Expert evidence

36 Dr Duflou was engaged by the Defence to prepare a report to address particular aspects of the injuries suffered by Mdm Low. In his report dated 27 April 2014, Dr Duflou agreed with Assoc Prof Lau that Mdm Low had passed away due to the inhalation of fire fumes and burns. He also accepted that the head injuries which Mdm Low sustained were unlikely to have been fatal.

37 Where he disagreed with Assoc Prof Lau, however, concerned the cause of the various injuries. He opined that the skull fractures did not present themselves as injuries which would have been caused by a heavy cutting instrument, such as a cleaver. He also expressed the view that it was "possible" for the incised wounds to have been caused by the chain and padlock, provided that it "struck to the body in an appropriate way". Specifically, he wrote:

(a) It was "unlikely but not impossible" for the injury to the armpit to have been caused by the chain and padlock.

(b) It "would not be unreasonable" to suggest that the injury to the olecranon process could have been caused by an impact with a chain and padlock.

(c) The injury to the finger "could certainly be" the result of impact with a chain and padlock, provided Mdm Low's hand was held in a defensive posture over her head at the relevant time.

38 Dr Duflou's evidence on this issue proved to be the main point of departure between the two experts. I will discuss this further at [75]–[83] below.

Version No 2: 27 Oct 2020 (22:39 hrs)

The law on s 300(*d*) of the Penal Code

39 I turn to the applicable law. Section 300(*d*) of the Penal Code is unique because it is the only form of murder for which an intention to cause death, or bodily injury to a particular person is not an ingredient of the offence. Instead, what is required is the performance of an imminently dangerous act when one knows that the act in question "must in all probability cause death or such bodily injury as is likely to cause death." The relevant provisions of the Penal Code read:

> **Culpable homicide**
>
> **299**. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, *or with the knowledge that he is likely by such act to cause death*, commits the offence of culpable homicide.
>
> …
>
> **Murder**
>
> **300**. Except in the cases hereinafter excepted culpable homicide is murder —
>
> …
>
> (*d*) if the person committing the act *knows that it is so imminently dangerous that it must in all probability cause death*, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.
>
> *Illustrations*
>
> …
>
> (*d*) *A*, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.
>
> [emphasis added]

Version No 2: 27 Oct 2020 (22:39 hrs)

40 It is apparent that there are two limbs to the *actus reus* in that the offence takes place either where the act in question is so imminently dangerous that it must in all probability cause death *or* where the act is so imminently dangerous that it must in all probability cause such bodily injury as is likely to cause death. In the present case, the Prosecution relied on the former. Accordingly, there are four cumulative elements which have to be proved in order for the present charge to be made out:

(a) First, the Accused must have performed an act which caused death.

(b) Second, the act must have been so imminently dangerous that it must in all probability cause death.

(c) Third, the Accused must know that this act must have been so imminently dangerous that it must in all probability cause death.

(d) Fourth, this act must have been performed without any excuse for incurring the risk of causing death.

41 The parties were largely in agreement as to the applicable legal principles. However, given that s 300(*d*) of the Penal Code is very rarely invoked, and there is no known case of a conviction based on this provision in Singapore, I shall set out the law in a little more detail before proceeding. The first element is common to all acts of homicide, and focuses on the causative link between the *actus reus* and the death. I need not say more of this and will therefore focus on the second to fourth elements.

The character of the act

42 The second element relates to the character of the *actus reus*, and it centres on the notion that the act be so "imminently dangerous that it must in

Version No 2: 27 Oct 2020 (22:39 hrs)

all probability cause death, or such bodily injury as is likely to cause death". It is not immediately apparent, from a plain reading of s 300(*d*), that the law requires proof of the character of the act as an independent element of the offence. However, this flows from the fact that the third element of the charge, being the *mens rea* for s 300(*d*), is knowledge.

43 When one makes a claim to knowledge, one is also necessarily making a claim that a certain state of affairs exists. Thus, one cannot "know" something if that something is not in fact true. This point was succinctly made by Lord Hope of Craighead in *Regina v Montila and others* [2004] 1 WLR 3141 at [27]:

> … A person may have reasonable grounds to suspect that property is one thing (A) when in fact it is something different (B). But that is not so when the question is what a person knows. A person cannot know that something is A when in fact it is B. *The proposition that a person knows that something is A is based on the premise that it is true that it is A.* The fact that the property is A provides the starting point. Then there is the question whether the person knows that the property is A. [emphasis added]

Thus, one cannot prove that someone "knows" something, "X", unless one is able to prove that "X" is true (see *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 ("*Ang Jeanette*") at [30]). On this understanding, proof of the objective dangerousness of the act is a crucial factual predicate without which one cannot show knowledge.

44 In my view, there are two dimensions to this inquiry of the character of the act. The first, which arises out of the expression "imminently dangerous", relates to the temporal immediacy of the danger. *The Shorter Oxford English Dictionary* (Oxford University Press, 6th Edition, 2007) defines "imminent" variously as "[i]mpending, threateningly, hanging over one's head; ready to befall or overtake one; close at hand in its incidence; coming on short."

Version No 2: 27 Oct 2020 (22:39 hrs)

Therefore, it is clear that in order to qualify, an act has to be an immediate source of danger; it will not suffice if the risk will only eventuate sometime in the future. The second, which arises from the clause "must in all probability cause death, or such bodily injury as is likely to cause death", relates to the certainty of the outcome and is a measure of the gravity of the danger. A comparison with s 299 of the Penal Code is instructive. In *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174, the Malaysian Federal Court of Criminal Appeal explained that if an act is only "likely" to cause death then it is culpable homicide, if it is "the most probable result, it is murder" (at 176C *per* Raja Azlan Shah FJ). Therefore, the difference between an offence under s 299 and that under s 300(*d*) is one of degree.

45 In *State of Andhra Pradesh v Rayavarapu Punnayya & another* [1977] 1 SCR 601, Sarkaria J, delivering the judgment of the Indian Supreme Court, explained that in order for an act to fall within the Indian equivalent of s 300(*d*), the risk posed must be such that the probability of death "approximates to a practical certainty" (at 608G). In my view, this is a useful touchstone to apply as it captures the essence of the inquiry, which is that the danger posed is immediate, and the prospect of death so swift and sure that as a practical matter, it is an almost certain outcome. To illustrate this, the Penal Code provides the example of a person firing a loaded canon into a crowd of persons and killing one of them.

The knowledge requirement

46 Knowledge is understood as the subjective awareness of the existence of a particular state of affairs (see *Ang Jeanette* at [30]). Thus, the third element requires that an accused must subjectively know, at the time he committed the act, that it was so imminently dangerous that it would in all

Version No 2: 27 Oct 2020 (22:39 hrs)

probability cause death or such bodily injury as was likely to cause death. Without proof of subjective awareness of the dangerousness of the act, there is no liability for murder within the meaning of s 300(*d*). In *Tan Cheng Eng William v Public Prosecutor* [1968-1970] SLR(R) 761, an appeal against a conviction under s 300(*d*) of the Penal Code was allowed. Delivering the judgment of the court, Wee Chong Jin CJ said (at [9]):

> … It is not sufficient to amount to murder under s 300 for an act to be so imminently dangerous that it must in all probability cause death. Such *an act becomes murder only if the person who commits the act, and death results, knew, when committing the act, that it was so imminently dangerous* that it would in all probability cause death, or such bodily injury as was likely to cause death. [emphasis added]

Without excuse

47 The fourth element of the charge is that the act in question must have been performed "without any excuse for incurring the risk of incurring death, or such injury as aforesaid". The requirement that the act be performed "without excuse" is a constitutive element of the offence (in the absence of which liability is not established) and the burden of proving this, beyond a reasonable doubt, rests on the prosecution. Thus, it has been stated that it has to be "positively affirmed that there was no excuse" (see *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code, 1860* (Bharat Law House, 27th ed, 2013) at p 1481). As to what should constitute an excuse, one author has suggested that this proviso is meant to exclude acts which, though extremely dangerous, are tolerated by the community even though none of the prescribed exceptions would strictly apply to exclude criminal liability (see Stanley Meng Heong Yeo, *Fault in Homicide: Towards a Schematic Approach to the Fault Elements for Murder and Involuntary Manslaughter in England, Australia and India* (Federation Press, 1997) ("*Fault in Homicide"*) at pp 131–133). However, it was further observed that

Version No 2: 27 Oct 2020 (22:39 hrs)

in practice, courts today rarely find that causing the death of a person through the knowing performance of an imminently dangerous act can be excused (see *Fault in Homicide* at p 132). Having set out legal principles, I now turn to the facts.

Findings on the elements of the charge

48 From the parties' submissions, it was clear that there was no dispute over the first and fourth elements of the charge, and so I will deal with these briefly. It was common ground that the cause of death was a combination of inhalation of fire fumes and severe burns, and that the Accused's act of starting the fire was the proximate cause of Mdm Low's death. Also, it was not argued (and I did not think it could be seriously argued) that the Accused had any excuse for doing so. Therefore, the Accused performed an act which caused death, and did so without any excuse. The key contentions centred on the second and third elements of the charge, which concern the imminently dangerous character of the act and the Accused's knowledge thereof. I shall deal with each in turn.

Whether death was a practical certainty

49 The *actus reus* of the charge is the act of setting fire. The question, therefore, is whether the risk of death posed by this act was such that it could be said that death was a practical certainty. The Prosecution submitted that it was, arguing that regard must be had not just to the act *per se* (*ie*, the intrinsic dangerousness of the act), but to the danger posed by the act when viewed in all the circumstances of the case. When this broader perspective is adopted, they contended, it may be concluded that once the Accused lit the fire, death was inevitable. The Prosecution pointed to the following three factors:

Version No 2: 27 Oct 2020 (22:39 hrs)

(a) The office was a "fire trap". It was a small enclosed space in which toxic fumes from the fire would quickly build up and anyone caught inside would quickly succumb because of the lack of oxygen and the heat stress from exposure to the fire. Compounding this was the fact that the fire blocked the only exit.

(b) The Accused had just incapacitated Mdm Low, who was unconscious when the fire started. Worse, she had fainted at the back of the office, which was the farthest place in the office from the exit.

(c) The fire would have spread quickly because of the large quantity of flammable material in the office. Not only was there a lot of paper at the secretary's table, but the office itself was comprised mostly of wooden furniture.

50 By contrast, the Defence submitted that the character of the act was not such as could be said to be so imminently dangerous that death was certain. They submitted that there was a "reasonable possibility [that Mdm Low] could have escaped death." They gave two main reasons for arriving at this conclusion:

(a) The evidence showed that Mdm Low was not fully incapacitated, had regained consciousness, and was ambulatory.

(b) They noted that the fire had not been started on Mdm Low's body, no accelerants had been used, and Mdm Low had not been confined or restrained in any way.

51 As a preliminary point, I agreed with the Prosecution that the inquiry should not be narrowly confined to whether the act was dangerous in its

Version No 2: 27 Oct 2020 (22:39 hrs)

intrinsic nature, but should properly take the surrounding circumstances into account insofar as they go towards increasing the hazard involved. This was the approach taken in the Malaysian case of *Yeap Boon Hai v Public Prosecutor* [2010] 2 MLJ 433 ("*Yeap Boon Hai*"). There, the accused purchased four containers of petrol and used it to start a fire in a shop house where his wife and five others were sleeping at 3.50am, killing all of them. In concluding that this act fell within the ambit of the fourth clause of s 300 of the Malaysian Penal Code (which is *in pari materia* with s 300(*d*) of our Penal Code), the Federal Court wrote (at [24]):

> … the appellant started the fire to the shop house *in the early hours of the morning knowing full well that the shop house was occupied by so many people* including his own wife and children. His act had put the lives of so many innocent people in grave danger. *In the circumstances* it cannot be denied that his act was so imminently dangerous and that in all probability it will cause death. … [emphasis added]

52 I accepted, as the Prosecution pointed out, that the office was an enclosed space which would eventually lead to the build-up of toxic fumes, the office contained wooden furniture with files and papers which formed combustible material, the Accused rendered Mdm Low unconscious, and Mdm Low was left at the far end of the office when the fire was set. In these circumstances, I had no hesitation in finding that the act was clearly dangerous, and that death was likely. However, in order to sustain a conviction under s 300(*d*), this was not enough. It had to be proved beyond reasonable doubt that death was a practical certainty. After careful reflection, I could not agree with the Prosecution that it was. I reached this conclusion by examining the matter from three perspectives.

Version No 2: 27 Oct 2020 (22:39 hrs)

The condition of Mdm Low

53 First, I start with the condition of Mdm Low. Before succumbing to the fire, Mdm Low sustained the three incised wounds and the five shallow skull fractures. The experts were unanimous that these were "*ante-mortem* injuries" and that is how I shall refer to them collectively. While I noted that there was disagreement about the number of attacks inflicted, their sequence and timing, and whether a heavy cutting instrument was used by the Accused, I shall leave these disputes aside for the present and return to them in due course. What I would like to focus on are the severity of the injuries and their consequences. On these, there was broad agreement. The following three points emerged from the evidence:

(a) The *ante-mortem* injuries were clearly not fatal. If the incised wounds had been inflicted before the skull fractures, it was Assoc Prof Lau's view that they would not have rendered Mdm Low unconscious. As for the skull fractures, Assoc Prof Lau described them as "shallow" and "superficial". While they could have resulted in contusions and mild cerebral haemorrhages, they would not have led to death.

(b) Mdm Low was not immobilised as a result of the *ante-mortem* injuries. The unchallenged evidence was that she had initially fallen unconscious with half her body inside a cubicle at the end of the office, and half her body outside the cubicle. However, later, she was found fully inside the cubicle. The Defence submitted, and I accepted, that this must mean that she had moved. In this connection, Assoc Prof Lau also testified that in view of the limited nature of the intracranial haemorrhage, it was "entirely plausible" that Mdm Low would have been able to move about, although he could not say precisely for how long.

Version No 2: 27 Oct 2020 (22:39 hrs)

(c) After the fire was started, Mdm Low survived for at least 20 minutes, and she was sufficiently conscious, at least at two points in time, to scream. The first time was at around 9.52am, while Mr Jap was waiting outside the office, and the second was at 10.10am, when Mr Rengarajoo entered the office (see [12] and [14] above).

54 From the above, it appeared to me that at the time the fire was started, Mdm Low was not injured so badly that she would not have regained consciousness, nor was she injured to the extent of being completely immobile. These points concerning Mdm Low's condition cast some doubt that the risk posed by the starting of the fire was such that the probability of death approximated to "a practical certainty".

The manner in which the fire was set

55 The second reason concerned how the fire was set. There is a subtle but important distinction that should be drawn here. The question was not how dangerous the fire eventually became. On this point, there was no question that the fire burned furiously and that it eventually grew to consume everything in the office. Rather, the question was how dangerous the way the Accused started the fire was. Section 300(*d*) calls for an evaluation of the dangerousness of the act at the time it was performed. Applying that to the present case, the question was whether the Accused's manner of setting the fire would have produced a fire that spread so quickly and widely, and or burnt so furiously that death would have been a practical certainty. I did not think so for two reasons.

56 First, there was no evidence that the Accused had used accelerants. At two points in their submissions, the Prosecution broached the possibility that accelerants *might* have been used. However, this submission cannot be

Version No 2: 27 Oct 2020 (22:39 hrs)

sustained. As the Defence pointed out, the Prosecution's witnesses, Major Koh and Dr Yeo, said that there was no evidence to this effect and their testimony was borne out by the objective evidence: (a) that there were no "trailers" found at the scene; and (b) that samples taken from the scene of the crime, the Accused's hands, and from the taxi did not reveal the presence of any ignitable liquid residues which were not inherently present.

57 Second, there was only one seat of fire. The clear evidence of Major Koh was that the fire was started at the secretary's table outside Mr Rengarajoo's office before spreading to other parts of the office. While the parties disagreed about whether the lighter was brought by the Accused to the office and whether he found his file, I did not consider these points to be material. What was critical was that the fire had only been started at one place in the office as this has an important bearing on the court's assessment of the dangerousness of the act. There was a difference between setting fire to the papers and files on the secretary's table, to setting about torching everything in sight, with a view to creating a fire that would consume everything inside the office. While the Prosecution submitted that the Accused had set out to burn everything in the office in order that his file (which he never found) would also be consumed in the ensuing conflagration, I did not think that there was sufficient evidence for such a finding to be made. If that were truly his intention, there would have been no reason for him to confine himself merely to the papers and files on the secretary's table. The logical thing would have been to set fire to everything around him indiscriminately. There was no evidence that he did anything of that sort.

58 At this juncture, a comparison with *Yeap Boon Hai* is instructive. There, the expert for the prosecution testified that the use of a liquid accelerant had contributed to the rapid spread of the fire, for the petrol seeped through

Version No 2: 27 Oct 2020 (22:39 hrs)

the staircase to the bottom floor of the shop house. The Federal Court held, "judging from the time and manner in which the fire was started", that the act was so imminently dangerous that it would in all probability cause death (at [22]). Pointing to this, as well as other cases decided in India and Malaysia, the Defence contended that the present case did not possess the features of a typical s 300(*d*) case. They pointed out that in each case where the setting of fire was the *actus reus* of the offence, accelerants had been used.

59 In response, the Prosecution contended that each case must turn on its own facts and the absence of accelerants is not a barrier to a finding of liability under s 300(*d*). However, I did not understand the Defence to be saying that the mere absence of accelerants means that liability under s 300(*d*) cannot be attracted. Instead, the Defence's submission, which I accepted, was that the absence of accelerants is critical because it has a significant impact on the speed and ferocity of a fire and, therefore, on the court's assessment on the likelihood that death would result. In my view, the absence of accelerants and the fact that the fire only had one seat of origin were critical matters which pointed away from a finding that the fire would have spread so quickly and or burnt so furiously in the office that the probability of death approximated to a practical certainty.

Escape was not a practical impossibility

60 The third reason was that it did not appear to me that escape was a practical impossibility. A central plank of the Prosecution's case was that the office was effectively a "fire trap" by which they meant that someone who was inside when the fire started faced no reasonable possibility of escape.

61 When I considered this matter more carefully, I could not agree with the Prosecution's submission. The question was about whether the act of

Version No 2: 27 Oct 2020 (22:39 hrs)

setting fire, when measured in light of the fact that the office was a small and enclosed space, the table was filled with papers, and the fact that there was an unconscious person in the room, was so dangerous that death was a practical certainty. It seemed to me that three points militated against such a finding:

(a) There was no evidence that there were any obstacles along the passageway which obstructed the escape route. While the Prosecution pointed out that the fire was started at the secretary's table along the passageway leading to the exit, it was never suggested that the passageway was immediately impassable once the fire had started.

(b) There was no evidence that the Accused sought to further restrain, constrain, or confine Mdm Low in any way. The unchallenged evidence was that the Accused had simply let Mdm Low be after she had fallen unconscious.

(c) At the time the fire was lit, the door was unlocked. This was supported by the fact that Mr Jap was able to open the door at 9.50am, as was Mr Rengarajoo at 10.10am (see [12] and [14] above).

62 If Mdm Low was somehow confined to the office or the fire had been set in such a manner as to preclude any possibility of escape, then these would have supported a finding that the act in question possessed that quality of dangerousness as was necessary to attract liability for murder. However, those were not the facts.

Conclusion on the dangerousness of the act

63 In light of the above, I could not conclude beyond a reasonable doubt that the act of setting fire, viewed in the context of all the relevant circumstances, was so imminently dangerous that it must in all probability

Version No 2: 27 Oct 2020 (22:39 hrs)

cause death. Death was a *likely* result but, in my judgment, it was not a practical certainty.

64 At the end of the day, any evaluation of the dangerousness of the act is an exercise in judgment. Our law distinguishes between the performances of different types of acts, even though all of them might cause death. If the act in question is one in which it can only be said that there was a risk of injury of others and nothing more, then the offender might be guilty of causing of death via a rash act (see s 304A of the Penal Code); if the act is one which was likely to cause death, then the offender might have committed the offence of culpable homicide not amounting to murder (see s 299 of the Penal Code); and finally, it is only if the act was one where the prospect of death is a practical certainty that a person might be guilty of murder within the meaning of s 300(*d*) of the Penal Code. These distinctions, along with the different *mentes reae* provided for each offence, might be fine, but they are distinctions which the law provides for and which this court must pay heed to and apply.

65 The difficulty with this evaluative exercise is that it requires an *ex post facto* exercise that takes place when it is already clear that, most tragically, a life has been lost. When an act is viewed through the prism that a death has occurred, one almost starts from the presupposition that the act is inexcusably dangerous so that when it was performed, death was almost certain to result. However, that cannot be the case. In every instance, the court has to consider the difficult question of how objectively dangerous the act was at the time it was performed.

Knowledge of the Accused

66 Given my finding that the second element of the offence has not been made out, it followed that the third element, being the Accused's subjective

Version No 2: 27 Oct 2020 (22:39 hrs)

knowledge of the imminently dangerous character of the act, has also not been made out. As discussed above at [42]–[43], one cannot "know" what is in fact not true. However, for completeness, I will go on to consider if it may be inferred that the Accused possessed the requisite *mens rea* for the offence of murder.

67 The Prosecution submitted that this question ought to be answered in the affirmative. They argued that the Accused knew certain "critical facts" which made such an inference irresistible. These "critical facts" were essentially the factors set out at [49], relied on by the Prosecution to establish the dangerous character of the act. In the circumstances, they contended that the Accused must have known that the fire would spread rapidly, and that Mdm Low would quickly succumb from injuries.

68 Further, the Prosecution submitted that "[i]n assessing if the accused possessed the *subjective mens rea* of knowledge, the Indian cases suggest that it may be relevant to consider if the accused *ought* to know that the act would be imminently dangerous" [emphasis in original]. In support of this contention, they cited the cases of *State of Madhya Pradesh v Ram Prasad* AIR 1968 SC 881 ("*Ram Prasad*") and *Bhagat Singh and Anr v Emperor* AIR 1930 Lah 266 ("*Bhagat Singh*"). They further contended that in rendering Mdm Low unconscious and deliberately setting fire to the files, the Accused had displayed "such callousness as to the imminent danger and unjustifiable risk taken [as] is sufficient to satisfy s 300(*d*)."

69 With respect, I did not agree. As a starting point, I think both cases cited are readily distinguishable. In *Ram Prasad*, the accused poured kerosene on the deceased before setting her alight and was charged for murder within the meaning of the fourth clause of s 300 of the Indian Penal Code (which is *in*

Version No 2: 27 Oct 2020 (22:39 hrs)

pari materia to s 300(*d*) of our Penal Code). In upholding the conviction, the Indian Supreme Court said that "*[n]o special knowledge is needed* to know that one may cause death by burning if he sets fire to the clothes of a person", commenting that it is "obvious that such fire spreads rapidly and burns extensively" [emphasis added] (at 614). In *Bhagat Singh*, the accused persons threw bombs into the middle of the chamber of the Central Legislative Assembly while it was in session. For that, they were charged with attempted murder within the meaning of the fourth clause of s 300 of the Indian Penal Code. In its judgment, the High Court of Lahore wrote that "anyone of even average intelligence, must have known that the explosions of such a missile in a crowded room, however carefully it might have been thrown, is an imminently dangerous act such as they must be *deemed* to know would in all probability cause death…" [emphasis added] (at [7]).

70 Properly considered, both cases are examples of situations where the courts were able to conclude from the circumstances of the offence alone (and without more) that the accused persons knew that death would, in all probability, result from their actions. The dangers involved in the actions are so self-evident that the prosecution need not show any other facts in order to discharge its burden of proving that the accused persons had the requisite knowledge to justify conviction. However, those were not our facts.

71 I return to the point in time when the Accused started the fire, in order to consider what inferences may be drawn as to the Accused's state of mind. Although the Accused had already knocked Mdm Low unconscious, it was not argued that the Accused knew that she would not regain consciousness. Nor was it argued that he had restrained her or confined her in any way. What was most critical, again, was the fact that the fire was started at a single location without the aid of accelerants. I compare this to *Yeap Boon Hai*, where the fire

Version No 2: 27 Oct 2020 (22:39 hrs)

was started with accelerants, in the wee hours of the morning (at about 3.50am) when other people would have been asleep, such that rescue and escape were remote prospects. While starting a fire on a table covered with paper while someone lay unconscious in the office in the middle of a work day morning was certainly a dangerous act, one cannot go further to say that it was so self-evidently dangerous that it may be said, that the Accused knew it would in all probability result in death.

72 In the circumstances, while I would conclude that the Accused knew that the act was *likely* to cause death. I was not of the view that it was possible to go further to say that it may be inferred that the Accused *knew* that death was a practical certainty. Therefore, even if it were held that the act of setting fire possessed the necessary quality of dangerousness to satisfy the second element of s 300(*d*), I would have found that the requisite *mens rea* for the offence had not been made out. By the foregoing, I found that it had not been proved beyond reasonable doubt that the Accused was guilty of the charge of murder under s 300(*d*).

Verdict

73 I now turn to consider what lesser offence has been established. I have set out s 299 of the Penal Code at [39] above, and highlighted the distinction between s 299 and s 300(*d*) at [44]. In my judgment, the act of setting fire was clearly dangerous, such that death was likely (see [52] and [63]). The Accused knew this (see [72]). Therefore, an offence of culpable homicide not amounting to murder within s 299 had been established, in that the Accused did an act which caused death with the knowledge that he was likely by such act to cause death. I found him guilty and convicted him of the lesser charge as set out at [3] above.

Version No 2: 27 Oct 2020 (22:39 hrs)

The factual disputes

74 There were a number of factual disputes which were not directly relevant to the determination of the second and third elements of the murder charge, or to my decision to convict the Accused on the lesser charge. For completeness, and in order to set out the factual matrix that I took into account for the purpose of sentencing, I will now deal with these.

Whether a heavy cutting instrument had been used

75 The first dispute centred on whether the Accused had brought a heavy cutting instrument (often identified as a cleaver) to the office and used it to assault Mdm Low. The Prosecution contended that the Accused had brought such a weapon with him and that he had used it to inflict the three incised wounds. The Defence, on the other hand, maintained that the Accused did not assault Mdm Low with anything other than the chain and padlock. In support of their respective positions, each side relied on the evidence of their respective experts. After carefully considering the matter, I agreed with the Prosecution that a heavy cutting instrument had been used because of the nature of the incised wounds.

76 Assoc Prof Lau's evidence was that the fracture to the olecranon process (see [22(b)] above) was a clear indicator that a heavy cutting instrument had been used. It was "most telling", he said, that the underlying bone had been "very neatly and cleanly sliced off", exposing a "very flat and even fractured surface". This was consistent with an injury caused by a "relatively heavy" sharp cutting instrument such as a cleaver. When asked if the fracture could have been caused either by falling concrete, falling glass or by the chain and padlock, Assoc Prof Lau explained that if falling debris or the chain and padlock had been responsible, the olecranon process would have

Version No 2: 27 Oct 2020 (22:39 hrs)

presented with comminuted (*ie*, fragmented) fractures instead of the clean cut that was seen during the autopsy. It was unlikely, he said, for something like debris or a chain and padlock to have caused such an injury.

77 When questioned on the fracture to the olecranon process, Dr Duflou testified that a small knife (like a fruit knife) would certainly not have been able to cause such an injury, though a cleaver might have. When asked if a chain and padlock could have caused the fracture, he answered that it was "probably… true" that it was difficult for a padlock to cut through bone. He accepted that the use of a padlock would generally have resulted in the shattering of the bone (a comminuted fracture, to use Assoc Prof Lau's terminology), instead of a clean cut.

78 In *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [75]–[76], VK Rajah JA (as he then was) explained that expert evidence had to be sifted, weighed, and evaluated in context. It must always be held up against the objective extrinsic facts and what is paramount is the "consistency and logic of the preferred evidence". Applying this approach to the present case, I preferred Assoc Prof Lau's testimony, which provided a clearer and more convincing explanation for the evidence. What was dispositive of this issue, in my judgment, was the injury to the olecranon process, which I did not think could satisfactorily be explained by the Defence's position that only a chain and padlock had been used. I would add that this conclusion also best accounted for the general profile of the incised wounds, all of which presented with neatly defined margins, which both experts accepted is consistent with the conclusion that they were sharp force injuries caused by sharp instruments.

79 While Dr Duflou also testified that it was possible for a chain and padlock to cause incised wounds, the force of his testimony was attenuated by

Version No 2: 27 Oct 2020 (22:39 hrs)

his admission that he had no clinical evidence to support his claim that of a chain and padlock ever having been used to inflict incised injuries. Instead, he based his conclusion on the results of an experiment with significant limitations and limited forensic significance. As Dr Duflou very fairly admitted, the sole purpose of the experiment was to "determine whether a blow with a chain and padlock could cause an injury that look[ed] like an incised wound." To this end, he nailed pieces of pig skin onto a masonry board and swung a chain and padlock at them multiple times and took pictures of the resulting cuts inflicted. This experiment, as Assoc Prof Lau pointed out, suffered from multiple shortcomings. There was no control experiment. Also, the swinging of a chain and padlock on a piece of porcine skin nailed to a board was very different from using it as a weapon on a human. Therefore, I found that the three incised wounds had been caused by a heavy cutting instrument which the Accused had brought to the office.

The number, sequence and timing of attacks

80 Second, and consequent to my finding on the aforementioned issue, I accepted the Prosecution's submission that there were at least two sets of attacks (one with the chain and padlock and the other with the heavy cutting instrument) over the Defence's submission that the Accused had only attacked Mdm Low once (using the chain and padlock only to inflict all the injuries).

81 As for the sequence and timing of the attacks, the Prosecution's position was that the attack using the heavy cutting instrument occurred first, and then the attack using the chain and padlock took place after Mr Jap left the office. The latter accounted for the "thuds" heard by Mr Jap. However, the Accused stated that the attack took place before Mr Jap entered the office.

Version No 2: 27 Oct 2020 (22:39 hrs)

82 In my view, there appeared to be no reason for the Accused to attack Mdm Low after Mr Jap had left the office. It was not disputed that she was still unconscious on the ground at the time Mr Jap entered the office. Further, at that juncture, Mr Jap did not hear screams from Mdm Low so as to suggest that she had regained consciousness. As stated by Mr Jap, it appeared that the "thuds" he heard after he left the office were likely to be from contact with a hard object like furniture, and not with contact with the body of Mdm Low. Given these points, I was more inclined to accept the Accused's version that he assaulted Mdm Low with the chain and padlock prior to Mr Jap's entry into the office. Further, it appeared to me that the heavy cutting instrument might have been used first, given Assoc Prof Lau's evidence that the incised injuries were unlikely to have rendered Mdm Low unconscious.

83 At the end of the day, while I found it deplorable that the Accused went to the office armed with two instruments to do some form of harm, and attacked Mdm Low using each instrument more than once, these aspects were not wholly material in the decision on conviction, because the *actus reus* of the offence was the setting of the fire.

Whether the Accused brought the lighter to the office

84 Third, I turn to the matter of the lighter. Mr Rengarajoo's evidence was that he did not smoke, and there was no reason for a lighter to be on the coffee table in the office. The Prosecution managed to recover other lighters from the Accused's taxi which were tendered as exhibits. The Accused maintained that he found the lighter in the office. Given that the Accused had not been forthright about bringing a heavy cutting instrument with him, and that the haversack contained some other personal effects of the Accused, I was more inclined to accept that the Accused brought the lighter with him when he went

Version No 2: 27 Oct 2020 (22:39 hrs)

to the office. Be that as it may, these aspects were also tangential to the conviction, and what remained critical was the manner in which the Accused set the fire.

Whether the Accused found the file

85 Fourth, there was a dispute as to whether the Accused found his file on the secretary's table. Mr Rengarajoo's evidence was that the file was in his room in the office, as he was working on it. Therefore, the file would not be on the secretary's table. Therefore, the Prosecution submitted that the Accused did not find his file. He had set fire to all the papers and files on the secretary's table, so as to burn his file. Further, the Prosecution suggested that he set out to burn the office at large, so that his file would be consumed in the process. The Prosecution suggested that if he had found his file, it would have sufficed for him to walk out with it.

86 The Defence contended that the Accused found his file, and sought to burn his file only. The evidence showed that a letter had been sent on 2 August 2011, relating to the legal fees dispute. Mr Rengarajoo could not be certain whether he sent the letter, or whether Mdm Low who assisted with secretariat support did so. Therefore, the Defence submitted that there was every reason for the file to be on the secretary's table.

87 On this aspect, I accepted that the Accused found his file. If the Accused sought to burn a file which he could not find, there would have been no reason for the Accused to confine himself merely to the papers and files on the secretary's table. What remained significant was that he did not set fire indiscriminately around the office. Even taking the Prosecution's case at the highest, it seemed that all the Accused sought to do was to burn the papers and

Version No 2: 27 Oct 2020 (22:39 hrs)

files on the secretary's table (hoping to burn his file), and not to burn the office down.

Credibility of the Accused

88 Before ending the discussion on the disputed facts, I should state that the Accused's version of the events has been fairly consistent in all the eight statements, as well as under cross-examination. By and large, he has admitted to his role in the events. Nonetheless, I was mindful that he had sought to downplay certain aspects which incriminated him, especially the issue of whether he had brought a cutting instrument to the office. Therefore, I was chary of accepting his evidence in full. I was careful to test his evidence against the objective evidence, as far as possible. As discussed above, I only accepted his version on two factual aspects, that the attack on Mdm Low with the chain and padlock took place before Mr Jap entered the office, and that he found his file on the secretary's table. I did so after evaluating that his evidence on these two aspects was more in accord with the objective evidence, and that there was insufficient basis to support the Prosecution's positions.

Sentence

89 Turning to the sentence, s 304(*b*) of the Penal Code provides that an offender who commits culpable homicide not amounting to murder shall, if the act is done with the knowledge that it is likely to cause death, be punished with imprisonment for a term which may extend to 10 years, or with fine, or with caning, or with any combination thereof.

Parties' positions

90 In terms of the applicable sentencing principles, the parties were in agreement on two points. First, the parties agreed that the facts and

Version No 2: 27 Oct 2020 (22:39 hrs)

circumstances of culpable homicide cases vary widely, and there is no applicable sentencing benchmark. Second, while the parties referred to precedent cases in which a wide range of sentences were imposed, parties agreed that the present case was factually unique. Given the two points above, it was not surprising that the parties departed on the appropriate sentence to be imposed. I should add that parties were also in agreement that the Accused's previous conviction for the offence of corruption (see [6] above) was not relevant for the purpose of sentencing.

91 The Prosecution pressed for the maximum sentence of 10 years to be imposed. Based on the many aggravating factors in the commission of the offence, the Prosecution argued that this was one of the worst types of cases of culpable homicide. The aggravating factors cited by the Prosecution included the presence of premeditation, the sustained and intense violence against Mdm Low, the multiple injuries caused to her, the cruel and painful manner of her death, and the risk of harm to the wider public. The Prosecution contended that the level of culpability of the Accused, due to these aggravating factors, brought the present case within cases where near-maximum or maximum sentences were imposed (see *Public Prosecutor v McCrea Michael* [2006] 3 SLR(R) 677 ("*McCrea"*); *Public Prosecutor v Aw Teck Hock* [2003] 1 SLR(R) 167 ("*Aw Teck Hock"*); *Public Prosecutor v AFR* [2011] 3 SLR 833; *Public Prosecutor v Mohamed Hassan Bin Mohamed Arshad* (CC 46/1999, unreported)). The Prosecution also urged the court to take into account the sentencing principles of deterrence and retribution.

92 In contrast, the Defence submitted that a sentence of not more than seven years' imprisonment would be appropriate. The Defence divided precedent cases into two categories. The first category consisted of s 304(*b*) cases where sentences of up to seven years' imprisonment were imposed. The

Version No 2: 27 Oct 2020 (22:39 hrs)

second category contained cases where sentences of eight to 10 years' imprisonment were imposed. In relation to the first category, the Defence referred to *Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63 ("*Leong Soon Kheong*"), in which the Court of Appeal imposed seven years' imprisonment on an accused who led a group in viciously punching and kicking an 18-year-old student, causing his death. In that case, the Court of Appeal found that there were no valid mitigating factors, but at least three aggravating factors, being the effect of the assault on the victim, the resort to gratuitous violence, and the accused's pivotal role as a ringleader in the group of attackers. The Defence submitted that in the present case, there were no such aggravating factors, and there were instead valid mitigating factors which I shall set out shortly. Turning to the second category of cases, the Defence argued that these were all readily distinguishable. These included *Public Prosecutor v Teo Heng Chye* [1989] 1 SLR(R) 680; *Tan Chee Hwee and another v Public Prosecutor* [1993] 2 SLR(R) 493; *Public Prosecutor v Budiman bin Hassan* [1994] SGHC 28; *Aw Teck Hock*; and *McCrea*.

93 The Defence relied on three main mitigating factors to distinguish *Leong Soon Kheong* and the other precedent cases. First, the Defence argued that the Accused made an early confession and was deeply remorseful for causing the death of Mdm Low. From the outset, the Accused did not deny assaulting Mdm Low with the chain and padlock, or starting the fire. Generally, he was cooperative with the police. At the trial, the areas of dispute were limited as the Prosecution's narrative was largely consistent with the Accused's position in his statements. Second, unlike in other precedent cases, his act of setting fire was not targeted at Mdm Low. He was setting fire to the file because his "paternal instincts got the better of him". Related to the above, the third point was that the Accused acted in a "compromised" state of mind. After his previous conviction for the offence of corruption, the Accused

Version No 2: 27 Oct 2020 (22:39 hrs)

suffered a decade of financial and personal problems. At the time of the offence, he "was so overwhelmed, in anguish and frustrated over the possible fate of his children if the writ of seizure went through that he could not control himself". It was in that frame of mind that he set fire to the file.

Decision

94 In *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR (R) 679 at [33], which was cited by both parties, the Court of Appeal recognised that homicide cases are "not easily classified, and there is no such thing as a "typical" homicide." The Court of Appeal thought that it was not desirable to set a sentencing benchmark for culpable homicide, in view of the "extremely varied" range of circumstances in which such offences are committed. Instead, sentencing for culpable homicide remained a matter within the trial judge's discretion, and should be determined "on the facts of each particular case".

95 In any event, as submitted by the parties, none of the precedent cases involved comparable facts. The precedent cases invariably involved acts by the accused persons on the victims (*eg*, stabbing, strangulation, or brute force), which *directly* led to the death of the victim. In the present case, however, it was not the Accused's initial assaults on Mdm Low, but his act of setting a fire, which ultimately led to her death. For this reason, I did not find the cases cited by the parties to be particularly useful to the present scenario, and do not propose to discuss the cases in detail.

96 Instead, upon reviewing the unique facts and circumstances of this particular case, I agreed with the Prosecution that this case should be calibrated as among one of the most serious instances of culpable homicide not amounting to murder punishable under s 304(*b*) of the Penal Code.

Version No 2: 27 Oct 2020 (22:39 hrs)

97 In *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 at [28], Sundaresh Menon CJ cited *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR 653 at [87], and observed that when meting out a sentence that is close to the statutory maximum, the prosecution must demonstrate that the offence is "among the worst type of cases falling within that prohibition". A sentence should be "proportionate not only to the culpability of the offender but also in the context of the legislative scheme". Menon CJ stated (at [29]) that the court should consider "the range of conduct that may be captured at either end of the sentencing range", and then consider where in that spectrum the conduct that is before the court falls. The maximum sentence is not reserved for the "worst case imaginable", but the court is required to identify a range of conduct which characterises the most serious instances of the offence in question, and determine whether a particular act falls within the range (see *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 at [13], *per* Yong Pung How CJ). In the case at hand, the following factors made the Accused's conduct fall at the end of the spectrum together with the most serious culpable homicide cases.

98 First, there was a degree of planning involved prior to the commission of the offence. The Accused went to the office with ill intent, so as to settle the outstanding legal fees dispute. He was armed with the chain and padlock, as well as a heavy cutting instrument. He also had a lighter with him. That said, there was no evidence that he set out with the *intent* to fatally injure anyone or to burn the office down.

99 Second, the manner in which the Accused attacked Mdm Low was deplorable. I shall not say more on this, but I relied on my findings at [80], [82] and [83] above on the number, sequence and the timing of the attacks. I also noted that the Accused attacked Mdm Low multiple times on the head,

Version No 2: 27 Oct 2020 (22:39 hrs)

which is one of the most vulnerable parts of the body. To further aggravate matters, at the material time, Mdm Low was alone in the office, unarmed and defenceless.

100 Third, the Accused's acts led to serious consequences. Mdm Low suffered multiple injuries due to the Accused's assaults (see [21] and [22] above). Eventually, the fire deliberately started by the Accused caused Mdm Low to suffer a painful death from "a combination of inhalation of fire fumes and extensive severe burns".

101 Finally, apart from causing Mdm Low's death, the fire had a wider impact. The fire caused disquiet and alarm among the occupants of the Afro-Asia Building on a workday, necessitating an evacuation. In mitigation, the Defence submitted that the fire was classified by Major Koh as "minor", as it was "compartmentalised" within the unit. However, Major Koh was clearly referring to the eventual scale of the fire. I agreed with the Prosecution that the fire had the potential to spread, and cause even greater damage. It was due to the intervention of the fire fighters that the fire was eventually contained within the office. Even then, the fire had already consumed the contents of the office (see [17] above). Major Koh's fire investigation report also noted that the fire caused damage to other parts of the building, including (a) heat and smoke damage to the lift in front of the office, façade of the building, and the electrical wirings and ceiling on the sixth floor, and (b) water damage to certain other offices. Thus, the fire posed a clear risk to public safety, and caused substantial property damage.

102 Turning to the factors highlighted in mitigation, I was of the view that they should be accorded little weight. First, on analogy with the reasoning in *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [33], while a

Version No 2: 27 Oct 2020 (22:39 hrs)

timeous confession can be indicative of genuine remorse, it is to be accorded little weight if the offender confessed knowing that he had effectively been caught red-handed. In this case, the Accused was captured on CCTV footage, and witnesses were available to readily identify him as the culprit. Little weight should therefore be placed on his confession and cooperation with the investigating officers. In any event, while the Accused admitted to attacking Mdm Low and to setting the fire, the Accused chose to downplay certain aspects of the attack on Mdm Low (see [88]). Second, admittedly, there was no evidence that he set the fire targeting Mdm Low. However, the Accused aimed the prior assaults at Mdm Low and these should be accorded due weight. Finally, while the Accused might have acted in a fit of anger and out of a wish to protect his children, he was of sound mind, and understood the nature and consequences of his act. He should accordingly be held fully accountable for the consequences of his act.

103 In my view, the presence of planning, the use of two instruments, the violent and multiple attacks, the injuries caused to Mdm Low, the painful manner of her death, the setting of fire after knocking Mdm Low unconscious, and the Accused's underlying motivation to resolve the legal fees dispute in this dangerous manner were factors which placed the Accused's conduct on the highest end of the spectrum of culpability, thus warranting the maximum sentence. Also, the maximum sentence would send a clear signal that an act such as the Accused's setting of fire, with an attendant risk to public safety and harm to property, would not be tolerated.

104 In light of the above, I agreed with the Prosecution that the maximum sentence as provided for under s 304(*b*) of the Penal Code was warranted. Accordingly, I sentenced the Accused to 10 years of imprisonment, backdated

Version No 2: 27 Oct 2020 (22:39 hrs)

to 11 August 2011. The Accused was 71 years of age. He was not liable for caning, and none was imposed.

Conclusion

105 As Mr Rengarajoo was giving evidence in court, it was apparent that the loss of Mdm Low has caused him untold pain and grief. One hopes that with time, there would be a measure of closure and healing for Mdm Low's loved ones.

Hoo Sheau Peng
Judicial Commissioner

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A Sangeetha, Emmanuel Lee (Trident Law Corporation), and
Amarick Singh Gill (Amarick Gill LLC) for the accused.

Version No 2: 27 Oct 2020 (22:39 hrs)