IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 164

Criminal Case No 20 of 2019

Between

Public Prosecutor

… *Plaintiff*

And

Miya Manik

… *Defendant*

GROUNDS OF DECISION

[Criminal Law] — [Complicity] — [Common intention]
[Criminal Law] — [Offences] — [Murder]
[Criminal Procedure and Sentencing] — [Sentencing]

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Public Prosecutor
v
Miya Manik

[2020] SGHC 164

High Court — Criminal Case No 20 of 2019
Valerie Thean J
9, 10, 14–17, 21, 22 January, 25–27 February, 6 April, 18 June, 20 July 2020

11 August 2020

Valerie Thean J:

Introduction

1 A field at Tuas South Avenue 1 ("Avenue 1") was the site of contraband cigarette sales where two rival syndicates sought to exert control. On 24 September 2016, Munshi Abdur Rahim ("Rahim"), was attacked by three men from an opposing syndicate and died. Two of these three men, identified as "Aziz" and "Mitho", were not arrested. The third was the accused, Miya Manik ("Manik").

2 Manik was tried on a single charge with two alternatives, as follows:

> That you, **MIYA MANIK**, on 24 September 2016, at or about 9.47pm, at the vicinity of Tuas View Dormitory located at 70 Tuas South Avenue 1, Singapore, did commit murder by causing the death of Munshi Abdur Rahim ("the deceased"), *to wit*, by slashing the deceased's left leg with a chopper, causing the deceased to suffer, *inter alia*, a 16 x 4 cm deep oblique incised wound on the proximal part of the lateral aspect of the

> left leg, with intention to cause said bodily injury, which injury is sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under s 300(*c*), punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> Alternatively,
>
> on 24 September 2016, at or about 9.47pm, at the vicinity of Tuas View Dormitory located at 70 Tuas South Avenue 1, Singapore, together with two unidentified males known as "Aziz" and "Mitho", and in pursuance of the common intention of you three, did commit murder by causing the death of Munshi Abdur Rahim ("the deceased"), *to wit*, by slashing the deceased's left leg with a chopper, causing the deceased to suffer, *inter alia*, a 16 x 4 cm deep oblique incised wound on the proximal part of the lateral aspect of the left leg, which injury is sufficient in the ordinary course of nature to cause death, knowing it likely that such injury would be caused, and you have thereby committed an offence under s 300(*c*) read with s 34 and punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

Facts

Background

3 There are many workers living in the dormitories around Avenue 1. The field at Avenue 1 and various areas nearby were lucrative sites for contraband cigarette sales. At the material time of this offence in the latter part of 2016, a syndicate controlled the sales of contraband cigarettes in four different areas, including Avenue 1.[1] The overall control of the syndicate was managed by one "Jahidul".

4 Each of these four areas had a syndicate member in charge ("ICs"), as follows:[2]

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1 PS16 at para 2.

2 PS16 at para 2.

(a) Avenue 1: Jahidul and one "Shopon";

(b) Tuas South Avenue 4 ("Avenue 4"): Howlader Emon ("Emon") and one "Govindo";[3]

(c) Tuas South Avenue 6 ("Avenue 6"): Sohel Rana Abdul Kadir ("Sohel") and Ahmed Kayes ("Toton"); and

(d) Soon Lee: one "Ripon".

5 The sale of cigarettes was managed in each area by its ICs independently. Each area's ICs would engage cigarette sellers and lookouts, and would also determine the price at which the cigarettes were sold.[4] At close of business each day, the sales proceeds would be handed over to the ICs, who would pay the cigarette sellers, lookouts, and any necessary "protection money", and, where applicable, split the profits amongst themselves. Profits were not shared between the different areas.[5] Avenue 1, where the dispute arose, was the most profitable. The largest number of workers lived in the dormitories in that area.[6]

6 In late August or early September 2016, Jahidul was slated to leave Singapore. According to Toton, Jahidul initially intended to hand over Avenue 1 to one "Faraque". Eventually, control of Avenue 1 was given to Shopon, who was in turn to pay Faraque and two men working for him, one "Rabbi" and one

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3 NE 21 January 2020 at p 3, ln 15.

4 PS16 at paras 3–4.

5 NE 21 January 2020 at p 4, ln 16–21.

6 NE 21 January 2020 at p 4, ln 1–3.

"Badsha", a nightly sum.[7] Faraque, however, formed a breakaway faction ("the rival syndicate") in order to take control of the field at which the sales were conducted at Avenue 1.[8] Rahim was a member of this rival syndicate.[9]

7 Manik reported to and assisted Shopon with cigarette sales at Avenue 1. Other members of the syndicate, or persons friendly with members of the syndicate, called by the Prosecution to give evidence, were the following: Miah Mohammad Rasal ("Rasal"),[10] Ripon Hasan Shahidullah Bhuiyan (another "Ripon", who was not the same Ripon managing Soon Lee),[11] Goni Osman ("Goni"),[12] Toton,[13] Emon,[14] Ahamed Fahad ("Fahad")[15] and Mamun.[16]

Events of 24 September 2016

8 On 24 September 2016, at around 7pm, Goni and Manik went to a canteen at Avenue 4 ("the Canteen"). Other members of the syndicate were present, and various witnesses gave accounts of a meeting there. Throughout these events, Manik was the only one wearing a cap.[17]

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7 PS16 at para 8.

8 P186 at para 8.3: AB at p 258.

9 NE 14 January 2020 at p 5, ln 1–2.

10 NE 10 January 2020 at p 30, ln 28–29.

11 NE 14 January 2020 at p 3, ln 17–19.

12 NE 15 January 2020 at p 19, ln 27–28.

13 PS16 at para 1; NE 16 January 2020 at p 3.

14 NE 21 January 2020 at p 2, ln 13–15.

15 NE 14 January 2020 at p 55, ln 20–25.

16 NE 15 January 2020, p 2, ln 21–23.

17 NE 15 January 2020 at p 15, ln 6–17.

9 Subsequent to this meeting, a group of them started to make their way to the field at Avenue 1.[18] It was not disputed that among these were Rasal, Ripon, Goni, Aziz and Mitho, the latter two being the "Aziz" and "Mitho" referred to in the charge. For clarity, I should mention that some of the witnesses distinguished between a "tall Mitho" and a "short Mitho", and in this context, the Mitho named in the charge was referenced as "tall Mitho".[19] The identity of the "Mitho" named in the charge is not at issue in the present case.

10 At Avenue 1, Fahad, Mamun, Toton, and Sohel arrived by taxi, stopping inside the carpark of Tuas View Dormitory at Avenue 1.[20] Toton approached Rahim, a member of the rival syndicate, and asked Rahim why he was selling cigarettes in the area. Manik, who knew Rahim from a previous construction project, went to speak to Rahim and shook Rahim's hand.[21] Toton then suggested that they talk at Avenue 6 and the trio started moving in that direction.[22] At this point, confusion erupted. The source of the confusion was not clear. According to Ripon, Aziz first yelled "Let's chop hard this son of a bitch";[23] Rasal, Goni, and Toton recounted that people started yelling "Police" or some variation linked to an alert about police presence,[24] while Fahad and Mamun simply testified that people started to shout and run around.[25] Rahim, at

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18 NE 25 February 2020 at p 8, ln 4–15.

19 See NE 15 January 2020 at p 21, ln 26–27 (Goni);

20 PS 23, NE 25 February 2020 at p 8, ln 19–21; NE 16 January 2020 at p 7, ln 6.

21 NE 25 February 2020 at p 8, ln 29 to p 9, ln 4.

22 NE 25 February 2020 at p 10, ln 13 - 15

23 NE 14 January 2020 at p 12 ln 10 – 12

24 NE 10 January 2020 at p 39, ln 19–20 (Rasal); NE 15 January 2020 at p 26, ln 15–16 (Goni); NE 16 January 2020 at p 9, ln 29–30 (Toton).

25 NE 14 January 2020 at p 58, ln 14–15 (Fahad); NE 15 January 2020 at p 5, ln 6–8 (Mamun).

that juncture, fled. Manik, together with two others, ran after Rahim. When Rahim fell to the ground, the three men attacked Rahim, who thereafter managed to get up and run off. He called the police from a short distance away, saying, "People chopped me with knife"[26] but collapsed soon after. The police informed the Singapore Civil Defence Force, which dispatched an ambulance crew.[27] Rahim was observed to be lying flat on his back in a pool of blood, and most of the bleeding was concentrated below the lower left leg.[28] While *en route* to the hospital, Rahim's pulse and breathing were no longer detected and Rahim was subsequently pronounced dead at Ng Teng Fong General Hospital.[29]

11 Meanwhile, Manik, Goni, Fahad, Mamun, Toton, and Sohel left the scene in the same taxi that had brought the latter four to Avenue 1,[30] as Mamun and Sohel had stayed with the waiting taxi during the altercation. Toton and Fahad[31] were dropped off first, followed by Manik, Goni, Mamun and Sohel. Other than Mamun,[32] they then went to East Coast Park. There, Manik, Goni, Sohel, Fahad, Toton, Rasal, Ripon and Emon met together.[33] There was a discussion about what had happened at Avenue 1. After the discussion, from there, instead of returning to their dormitories, Manik, Rasal, Ripon, Goni, and Emon went to stay at a hotel in Geylang.[34] Manik thereafter stayed with a friend

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26 P183: AB at p 254.

27 PS27 at para 2: AB at p 163.

28 PS27 at paras 3–4: AB at p 163.

29 P161: AB at p 59.

30 NE 25 February 2020 at p 24.

31 NE 14 January 2020 at p 59, ln 24 – 25; NE 16 January 2020 at p 10 ln 30 - 31

32 NE 15 January 2020 at p 8, ln 10–12.

33 NE 14 January 2020 at p 17, ln 6–14.

34 NE 21 January 2020 at p 8, ln 27–32; NE 15 January 2020 at p 30, ln 23–31.

until his arrest on 30 September 2016, when Manik accompanied this friend to a construction site in Tampines.[35]

The Prosecution's case

12 The Prosecution's primary case (the "Primary Case") was that Manik had inflicted the injury on Rahim's left leg ("the Fatal Injury"), with what the charge specifies as a "chopper". This chopper was described by witnesses as a big knife, and is referred to in the same manner in these grounds of decision. On the Prosecution's case, on 24 September 2016, members of the syndicate met at the Canteen, discussing the action to be taken at a meeting with the rival syndicate later that evening. Choppers were distributed. Manik received one, which he then brought along to the anticipated meeting with the rival syndicate at Avenue 1. During the incident, Manik used that chopper to intentionally inflict the Fatal Injury on Rahim. Knowing that Rahim was a member of the rival syndicate, Manik wanted to send a message to the rival syndicate not to interfere with their business. Manik then brought the chopper he used back to the taxi. Various statements were attributed to Manik which the Prosecution argued were "indicative of the fact in issue - whether the accused had chopped an individual on the leg".[36]

13 The Prosecution's alternative case (the "Alternative Case") was that, if it could not be proved beyond reasonable doubt which of the three assailants had caused the Fatal Injury, it was sufficient to show that the Fatal Injury was

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35 P186 at para 10.1: AB at p 261; P177: AB, pp 167–168; PS 28: AB at pp 165–166.

36 Prosecution's Written Submissions at para 50.

inflicted in furtherance of their common intention which arose, at the latest, just prior to the incident when the three men gave chase to Rahim.[37]

Manik's case

14 Manik's evidence was that, on the evening in question, at around 8pm, Goni and he were returning to the Tuas View Dormitory from Goni's hospital visit. Shopon then called him and asked him to go to Avenue 1 to check whether there was a police presence.[38] He went to Avenue 1 together with Goni, Ripon, and Rasal.[39] After checking once, he then went back to Avenue 1 again on Shopon's instructions and he reported that there was a police car there.[40] Goni then recommended that they go to Avenue 4 to eat, which explained why he was at the Canteen around 9pm. There were quite a few people in the Canteen whom he knew. Emon, Aziz and Mitho were also at the Canteen, but as he did not know them well, he did not pay attention to them.[41] Shopon then called and asked him to go to Avenue 1 that evening to help sell cigarettes.[42] He left the Canteen with Ripon and Rasal, and walked to Avenue 1 together with others who happened to be walking in the same direction, including Aziz, Mitho, and Kamrul.[43] At Avenue 1, they met Toton. Toton was getting down from the taxi, and Aziz and Mitho went to talk to Toton. Manik denied that he was armed with

37 Prosecution's Written Submissions at para 61

38 NE 25 February 2020 at p 6, ln 23–31.

39 NE 25 February 2020 at p 7, ln 1–10.

40 NE 25 February 2020 at p 7, ln 5–10.

41 NE 25 February 2020 at p 7, ln 19–27.

42 NE 25 February 2020 at p 7, ln 19–22.

43 NE 25 February 2020 at p 8, ln 4–11.

a chopper at this time. Rather, he claimed to have picked up a wooden stick from the ground shortly before the meeting to protect himself.[44]

15 Manik testified that when he saw Rahim, he went and shook Rahim's hand because they were acquainted from a previous construction project. Toton asked Rahim why he was there and selling cigarettes at "our area", [45] and suggested that the group move to Avenue 6 to talk. [46] On Manik's account, Rahim was suddenly attacked from the back by two men, who then fled.[47] His evidence was that he intended to run after Rahim's assailants, whose identities he contended were not known to him, in order to bring them back to Toton.[48] He saw a person fall in front of him, and he believed that to be one of the unknown assailants.[49] At the time of the attack, he was not aware that Rahim was the subject of the attack. He saw one person start kicking and punching the person who fell. Manik then used the wooden stick that he had picked up to hit that person, not knowing that it was Rahim. A third assailant then came to attack that same person. Manik claimed to have left the scene because he was scared when the third assailant join the fracas and produced a knife. By Manik's account, the third assailant used the knife on the fallen man's leg.[50] Subsequently, he was told that the two other men with him were Aziz and Mitho, which explained how he was able to identify them when he was questioned for the purposes of his statement.

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44 NE 25 February 2020 at p 9, ln 22–25.

45 NE 25 February 2020 at p 9, ln 1–4.

46 NE 25 February 2020 at p 10, ln 13 - 15

47 NE 25 February 2020 at p 10 ln 31 – p 11 ln 3

48 NE 25 February 2020 at p 11, ln 10–12.

49 NE 25 February 2020 at p 11, ln 30 to p 12, ln 2.

50 NE 25 February 2020 at p 13, ln 5 to 9.

Legal context, disputed issues and decision

16 In order to prove a charge of murder under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), the following are necessary (see *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 ("*Wang Wenfeng*") at [32], citing *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*")):

(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 (this is to be assessed *subjectively*); and

(c) that bodily injury inflicted is sufficient in the ordinary course of nature to cause death (this is to be assessed *objectively*).

17 In this case, the cause of death was established as acute haemorrhage due to incised wounds to the left leg and back. The Fatal Injury was identified to be an incised wound on the left leg. This wound transected the anterior tibialis artery and would have caused significant haemorrhage "individually sufficient to cause death in the ordinary course of nature".[51] The most significant injury to the back, an incised wound on the left lower thoracic region of the back, resulted in significant haemorrhage that contributed to death. The other injuries were relatively superficial and did not have a significant bearing on Rahim's death.[52] There was no dispute on the cause of death, or that the Fatal Injury was in the ordinary course of nature sufficient to cause death.

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51 AB at p 69.

52 AB at p 69.

18 Manik's defence joined issue with the first element, which required his action to have caused the Fatal Injury and, thereby, death, and the second element, which required an intention to cause that injury. He claimed that he was armed with a wooden stick only, and therefore it was not possible for him to have inflicted the Fatal Injury. The issues relevant to the Primary Case, therefore, were (i) whether Manik had been armed with a chopper; (ii) whether he inflicted the Fatal Injury; and (iii) whether he did so with the requisite intention.

19 In the event that the Prosecution was unable to show that Manik inflicted the Fatal Injury, on the Alternative Case, the Prosecution sought to show that the Fatal Injury was inflicted by Aziz, Mitho or Manik, in furtherance of their common intention, such that Manik was liable under s 300(*c*) read with s 34 of the Penal Code. The necessary elements for the use of s 34 of the Penal Code are (see *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119 ("*Daniel Vijay*") at [91]): (a) the criminal act element, (b) the common intention element, and (c) the participation element.

20 The first and third elements required by s 34 of the Penal Code were not in dispute. The Fatal Injury was inflicted by one of the assailants during the incident and Manik clearly participated in the criminal act in chasing Rahim and attacking him together with the other two men. The dispute centred on the second element, whether the three men shared the requisite common intention to cause s 300(*c*) injury. In this judgment, I adopt the same definition as that used in *Daniel Vijay* at [49]: a reference to common intention to cause s 300(*c*) injury is to common intention to inflict bodily injury sufficient in the ordinary course of nature to cause death.

21 The main factual issues were therefore the following:

(a) Was Manik armed with a chopper?

(b) If so, did Manik inflict the Fatal Injury? If so, then if the injury was intentionally inflicted, the Primary Case would be made out.

(c) If the Primary Case was not made out, did Mitho, Aziz and Manik share a common intention to inflict s 300(*c*) injury? If so, the Alternative Case would be made out.

(d) If neither (b) nor (c) were made out, could any inference be made concerning the common intention of the three men sufficient to ground an alternative charge?

22 I found that Manik was armed with a chopper, as was Aziz and Mitho. While the person who inflicted the Fatal Injury did so intentionally, it was not clear that Manik was the one who inflicted the Fatal Injury. Neither did the facts lead to the inference that the three men shared a common intention to inflict s 300(*c*) injury. I amended the charge against Manik to one under s 326 read with s 34 of the Penal Code, and convicted and sentenced him accordingly. I explain each of these decisions in turn.

Was Manik armed with a chopper?

23 I considered the following in deciding whether Manik was armed with a chopper: the injuries inflicted on Rahim; camera footage which showed Manik wielding a reflective object; Goni's evidence that Manik was given a chopper prior to the incident; Goni and Mamun's evidence that Manik was seen entering the taxi after the attack with a chopper; Manik's evidence in his statement and on the stand; and testimony that Manik used the word "*kop*" in relation to his participation.

Injuries sustained by Rahim

24 I deal first with the injuries sustained by Rahim. The Defence argued that the existence of blunt-force injuries found on Rahim was consistent with Manik's claim that he attacked Rahim with a wooden stick. And further, because the other two assailants were holding choppers, it followed that Manik must have been the one holding the wooden stick.

25 The injuries were inconclusive. The autopsy report and supplementary report from Dr Chan Shijia, a forensic pathologist attached to the Health Sciences Authority, revealed the following non-incised injuries:

(a) On Rahim's lower limbs, two abrasions on the left knee.[53]

(b) On Rahim's upper limbs, three bruises on the right arm and four abrasions on the right forearm, right hand, left forearm, and left hand respectively.[54]

(c) On Rahim's head, a bruise between the eyebrows and an abrasion on the right cheek, and on his abdomen, an abrasion on the right iliac fossa.

26 Dr Chan's evidence was that the blunt-force injuries on Rahim were non-specific and were equally consistent with being hit with a wooden stick or from falling, kicking, or defensive action.[55] The camera footage, which I detail in the next section, supported Dr Chan's explanation. Rahim fell and, while he

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53 AB 65

54 AB 64

55 NE 10 January 2020 at p 23, ln 15–17.

was on the ground, that he was kicked by Mitho and was struggling vigorously against the three assailants. It was not possible to conclude from the existence of the bruises whether a wooden stick was used during the assault.

Camera footage of the incident

27 I turn next to the footage obtained from a camera installed on the front left of a bus parked near the scene of the attack ("the Bus Camera Footage"). This camera pointed backwards. The bus driver, Sun Tao, gave evidence that the incident fell within the camera's field of vision because it took place to the left of the bus.[56] In the Bus Camera Footage, which showed a mirror image of the incident,[57] Rahim is first seen entering the frame and falling to the ground at "21:47:06". The person identified as Mitho first enters the scene at "21:47:06", and he proceeds to kick Rahim. Manik then enters the scene at "21:47:08". The person identified as Aziz enters the scene at "21:47:10". Each is seen holding objects with reflective surfaces at various times. Manik then leaves followed by the others, while Rahim runs off in a different direction, at "21:47:14".

28 The Prosecution argued for two reasons that Manik was holding a chopper in the Bus Camera Footage. First, the object that Manik was seen holding shared the same profile as the object seen in Mitho's hand. As it was not disputed that Mitho had a chopper, this meant that Manik also had a chopper. However, I was not satisfied that the inference could be drawn. Even if the profile of the objects shared a superficial similarity, it was not clear on the evidence that a wooden stick would *not* have the same profile. The Bus Camera

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56 PS24 at para 4.

57 NE 9 January 2020 at p 19, ln 4–8.

Footage at 21:47:14 (see P192) was not clear given that only one thin rectangular strip of light could be seen.

29 Second, the Prosecution submitted that the object seen could not be a wooden stick as it would not reflect light in that manner. There was some logical force to this argument. However, the rectangular strip relied on at "21:47:14" was not as bright as the other flashes of white at other parts of the Bus Camera Footage, where the weapons held by Aziz and Mitho were more clearly seen. When the object was seen at "21:47:07" (see P192), the object was not reflecting as much light, but shared the same dimensions. The Defence made the valid point that it was not explained why the object in Manik's hand reflected light far fewer times than the objects in Aziz's and Mitho's hands. In the absence, therefore, of any reconstruction or other evidence about how different materials would look in those lighting conditions, specifically how wood might look in the same light, and without any expert explanation for the variance in the brightness of the object at different times, it was impossible to conclude beyond a reasonable doubt that Manik held a chopper from the Bus Camera Footage alone.

30 I turn then to the reasons why I held that Manik was armed with a chopper.

Witness sightings of Manik with a chopper

31 There were two principal witness sightings of Manik holding a chopper. The first was at the distribution of choppers prior to the incident. It was not disputed that whoever obtained choppers at the distribution then hid their choppers in the waistband of their trousers. The second was at the taxi after the

incident, where witnesses saw Manik entering the waiting taxi with a chopper following the attack.

Did Manik receive a chopper prior to the incident?

32 The Prosecution led evidence from Goni and Ripon that there was a distribution of knives at the Canteen in preparation for a confrontation at Avenue 1. Manik's testimony was that he was not involved in any such distribution.

33 While Ripon testified that there was a distribution of weapons,[58] he admitted under cross-examination that he did not personally see Manik receive a chopper.[59] Therefore, the primary evidence that Manik received a chopper at this distribution came from Goni. Goni testified that at around 7pm on 24 September 2016, Manik and Goni went to the Canteen at Avenue 4. There, Toton, Emon, Rasal, Ripon, Mitho and Aziz were present.[60] They had a discussion concerning the problem at Avenue 1 which was caused by Faraque (see [6] above) and the rival syndicate. After this discussion, a "dark-skinned man" whom Goni did not recognise (identified as "Kamrul" by Ripon[61]) distributed four choppers, giving one each to Goni, Aziz, Mitho, and Manik. Goni testified to seeing each of them receive a chopper.[62] That "dark-skinned man" also told everyone that they should carry a stick or wooden weapon if

58 NE 14 January 2020 at p 14.

59 NE 14 January 2020 at p 45, ln 5–7.

60 NE 15 January 2020 at p 21, ln 14–28.

61 NE 14 January 2020 at p 14, ln 16.

62 NE 15 January 2020 at p 22, ln 1–19.

need be. After this, Goni, Aziz, Mitho, Rasal, Ripon and Manik walked towards Avenue 1 together with some others whom Goni did not know.[63]

34 I turn to evaluate Goni's testimony. Goni, too, received a chopper and had no reason to falsely implicate Manik. By testifying that Manik also received a chopper, he was not reducing his own involvement. Goni's evidence about the distribution at the canteen sits consistently with Ripon's testimony that there was such a distribution, which was not challenged by the Defence. There was some discrepancy in that Ripon testified that the meeting occurred at a computer room at Tech Park near Avenue 4, and the distribution of weapons at the Canteen,[64] but nothing turns on this since Ripon acknowledged that the two venues were close.

35 Other than Ripon, the other people identified at the meeting and who were called as witnesses were Toton, Emon, and Rasal. Their account was inconsistent with Goni's, but these inconsistencies could be rationalised in context. Whereas Goni testified that Emon and Toton were at the Canteen, Emon and Toton claimed that they were not there but were only at Avenue 6.[65] However, Rasal and Ripon both testified that Emon was there at Avenue 4 that evening[66] while Ripon also testified that Toton was present.[67] Emon and Toton were in fact leaders in the syndicate, and that evening, they were the ones who

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63 NE 15 January 2020 at p 23, ln 1–10.

64 NE 14 January 2020 at p 4, ln 21–26, and at p 14, ln 3–9.

65 NE 21 January 2020 at p 6 (Emon); NE 16 January 2020 at p 7 (Toton).

66 NE 10 January 2020 at p 34, ln 23–27 (Rasal); NE 14 January 2020 at p 4, ln 21–22 (Ripon).

67 NE 14 January 2020 at p 4, ln 21–22.

had given the instructions to go to Avenue 1 to confront the rival syndicate.[68] It was therefore clear that Emon and Toton would have had every incentive to distance themselves from the events that evening, and to testify that they were not at Avenue 4. In this light, this apparent inconsistency between Goni's evidence, on the one hand, and Emon's and Toton's evidence, on the other, did not cast any doubt on Goni's credibility. As for Rasal, Goni had testified that Rasal was at the meeting in the Canteen. Rasal, however, claimed that he had met the group which was walking towards Avenue 1 on the road at Avenue 4.[69] Either could have been mistaken in this detail and this was not a material discrepancy that undermined Goni's evidence.

36 The Defence's case that Goni was not a credible witness also concerned Goni's evidence about Manik entering the taxi with a chopper. Therefore, I turn to that aspect of the evidence.

Manik entering taxi with chopper

37 Manik, after leaving the scene of the incident, ran to the waiting taxi. Two witnesses saw Manik holding a chopper when he entered the taxi:

(a) Mamun testified that when Manik entered the taxi, he saw a "big knife kind of thing" in Manik's hand.[70] He maintained under cross-examination that it was the person who was sitting on the extreme right,

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68 NE 10 January 2020 at p 34, ln 23–27 (Rasal); NE 14 January 2020 at p 5, ln 3–12 (Ripon).

69 NE 10 January 2020 at p 33, ln 25–27.

70 NE 15 January 2020 at p 5, ln 10–12.

next to the right door, who had the chopper, and that he had not mistaken Manik for Goni.[71]

(b) Goni testified that he saw Manik hold a chopper when entering the taxi.[72]

Fahad also saw Manik holding a chopper in his hands during the taxi ride.[73] However, as Manik also claimed that Goni's chopper had been placed in his lap,[74] Fahad's evidence was not determinative of whether Manik had a chopper from the very beginning of the taxi ride. The focus, therefore, was on Mamun's and Goni's evidence.

38 The Defence submitted that the chopper that Manik was seen with in the taxi was actually Goni's. Goni was lying and Mamun was mistaken when they testified that Manik had carried a chopper into the taxi. I turn now to assess the strength of Goni's and Mamun's evidence.

39 The first issue relates to the order in which the various persons arrived at and boarded the taxi and the order in which they sat. For the purposes of this analysis, I discounted Sohel, who was seated in the front passenger seat.

(a) Fahad had testified that Mamun was already in the taxi, and that he boarded next, followed by Toton, then Manik and Goni (although the order of the last two was not clear).[75] They then sat in the following

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71 NE 15 January 2020 at p 11, ln 1–7 and 23–28.

72 NE 15 January 2020 at p 27, ln 23–26.

73 NE 14 January 2020 at p 59, ln 23–25.

74 NE 25 February 2020 at p 33, ln 16 – 17

75 NE 14 January 2020 at p 59, ln 4–20.

order, from left to right (facing towards the front of the taxi): Toton, Fahad, Mamun, Goni/Manik.[76] In cross-examination, Fahad appeared to be sure that Manik was sitting next to Mamun, while Goni was sitting next to the door.[77]

(b) Mamun did not give clear evidence on the order of arrival, but testified that they sat in the following order (again, from left to right): Toton, Goni, Fahad, Mamun, and Manik.[78] In particular, Mamun had testified that Goni had entered from the left.[79]

(c) Goni testified that, when he arrived, Fahad, Toton and Mamun were already there. He then boarded the taxi and was followed by Manik.[80] In his EIC, he testified that they were seated in the following order: Toton, Fahad, Mamun, Goni/Manik.[81] In cross-examination, he then testified that the order was actually Toton, Fahad, Goni, Mamun, and Manik.[82]

(d) Toton testified that he was the last to get into the taxi[83] and that he was seated on Fahad's lap.[84]

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76 NE 14 January 2020 at pp 69–70.

77 NE 14 January 2020 at p 72, ln 10–12.

78 NE 15 January 2020 at p 6, ln 9–19.

79 NE 15 January 2020 at p 9, ln 30–31.

80 NE 15 January 2020 at p 26, ln 30–32.

81 NE 15 January 2020 at p 27, ln 5–18.

82 NE 15 January 2020 at p 38, ln 26–28.

83 NE 16 January 2020 at p 10, ln 9–12.

84 NE 16 January 2020 at p 10, ln 18–20.

(e) Manik testified that he was the first to board the taxi (after Mamun, who was already there).[85] He claimed that they were seated in this order: Toton/Fahad, Manik, Goni/Mamun.[86]

40 It was not surprising that there were some differences in the accounts given by all of the witnesses, given that it must have been a chaotic evening, and these details were being recalled more than three years after the fact. It was also important to note that this was a situation of five grown men squeezing into the backseat of a taxi which would normally only fit three. As such, given the degree of confusion expected, the exact order could be difficult to piece together. Despite these qualifications, however, the evidence was consistent that Manik was on the right side of the taxi, in particular, to the right of Mamun – Fahad, Mamun, and Goni maintained this, and Toton did not give evidence on the overall order of seating. This lent further credence to Mamun's evidence that it was Manik who had the chopper when he entered, since it was the person on his right that had the chopper.

41 Manik sought to rely on the taxi's camera footage to show that he had been seated in the middle. The footage, admitted in CD6, showed Toton and Fahad alighting from the taxi first. A while later, the taxi is shown stopped by the road. The first person to be seen walking on the left of the taxi is Manik.[87] The Defence argued that this was proof that Manik had been sitting in the middle, to Mamun's left and to the right of Toton and Fahad, such that when Toton and Fahad alighted, he was seated next to the left door and was the first

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85 NE 25 February 2020 at p 24, ln 19–23.

86 NE 26 February 2020 at p 1, ln 28–30.

87 NE 26 February 2020 at pp 59–62.

to alight, presumably by the left door. The Prosecution noted, however, that Goni and Mamun were not captured in the footage, and that just because Manik was seen first did not mean that he was the first to alight from the left.[88] I agreed with the Prosecution that the footage did not go so far as to prove that Manik was seated in the middle to Toton's and Fahad's right. In the absence of evidence of where Goni and Mamun were relative to the taxi, it could not be ruled out that Manik was seated on the right and was the first to alight from the right door, then went behind the taxi and to the left before walking in front of the taxi, or that Goni and Mamun had exited from the left first and were standing out of the view of the camera. I did not find that this aspect of the evidence cast doubt on Goni's and Mamun's testimonies concerning what Manik was holding when he entered the taxi.

42 Manik criticised Goni's testimony as to what he did with his own chopper. In particular, Manik pointed to Goni's testimony that he had rolled down a taxi window and threw his chopper out of the taxi. In cross-examination, Goni first claimed that he had wound down the right window, but then recanted and stated that it was the left window. This was when he claimed that as Manik entered the taxi, he was pushed to Mamun's left.[89] A few questions later, Goni then stated that he did not wind down a window and that there had already been a gap in the window.[90]

43 The evidence, however, suggested that the windows were closed, that no one wound down the windows, and no one was seen throwing anything out

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88 NE 26 February 2020 at p 65, ln 21–23.

89 NE 15 January 2020 at p 38, ln 16–28.

90 NE 15 January 2020 at p 39, ln 24–26.

of the window. The taxi driver, Chong Say Leong, testified that the windows were closed when he left the carpark at Avenue 1, although he could not be sure if the windows were opened at any time during the journey.[91] Mamun testified that no one had unwound the window and thrown anything out.[92] Toton did not see anyone throw anything out of the window either, and, as far as he remembered, did not see anybody wind down the window on the left side (where he was), which was closed.[93]

44 These were valid criticisms about Goni's evidence. Nevertheless, these criticisms did not raise any suggestion that he was lying. First, the chaos would have been confusing. The witnesses could not be expected to have paid attention to everything that was happening. For example, the taxi driver's conditioned statement only made reference to a total of five passengers,[94] when it was the clear evidence of the other witnesses that there were six passengers in total, with five in the backseat. Second, Goni had no reason to lie. There was no suggestion that Goni was involved in Rahim's attack. Goni admitted from the beginning that he too had received a chopper during the distribution at Avenue 4 prior to the incident. If he had wished to contrive an account of how he threw away his chopper, easier circumventions were available. Third, in any case, the Defence's suggestion assumed that there was only one chopper in the taxi. Their suggestion was that Goni had lied about disposing of his chopper through the window, and that the only chopper seen in the taxi – Goni's chopper – was

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91 NE 17 January 2020 at p 7, ln 22–26.

92 NE 15 January 2020 at p 13, ln 14–30.

93 NE 16 January 2020 at p 15, ln 28 to p 16, ln 12.

94 PS23 at para 7.

placed on Manik's lap. This, however, ignored the history that both Goni and Manik were given choppers together with Mitho and Aziz at Avenue 4.

45 Mamun's evidence was the most credible. He was apparently not involved in the cigarette business[95] or the fight that day and had no reason to lie. The Defence argued that Mamun was mistaken as to the person entering from the right whom he saw holding the chopper. It is not disputed that Mamun saw Manik for the first time in his life when Manik entered the taxi.[96] That was also the first time he had seen Goni.[97] However, I was satisfied that Mamun had identified Manik as the person who was carrying the chopper. First, as noted above, I have found that Manik had entered the taxi from the right, and Mamun was clear that the person to his right had the chopper. His account of where Goni was relative to him was also consistent with Goni's eventual testimony in cross-examination. Second, Mamun also identified Manik as the person who was wearing a cap that day.[98] Manik was the only one wearing a cap in the backseat of the taxi. Finally, Mamun also identified Manik in court. In light of this, I found that Mamun's testimony could be accepted.

46 For the above reasons, I concluded that the evidence showed that Manik was given a chopper by Kamrul at the distribution and that he had been carrying a chopper when he boarded the taxi after the incident.

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95 NE 15 January 2020, p 2, ln 31 – 32

96 NE 15 January 2020 at p 9, ln 9–10.

97 NE 15 January 2020 at p 9, ln 7–8.

98 NE 15 January 2020 at p 15, ln 3–17.

Manik's testimony

47 My findings above were buttressed by Manik's lack of credibility in giving his account of that evening's events.

48 Manik's contention was that he was not involved in any meeting at the Canteen. He ignored the group that had gathered there. He said he noticed that there were quite a few people in the Canteen who used to live at the dormitory at Avenue 4, such as Emon, Aziz and Mitho, but Manik testified that he "really [didn't] know them very well so [he] didn't pay much attention to that".[99] Rasal, Ripon and Goni were clear, on the other hand, that Manik was involved in the meeting. Ripon testified that Manik was the person in charge of the group after Emon and Toton.[100] Video evidence established that Manik was at the head of the group that met at Avenue 4 to resolve the issue at Avenue 1. Manik said it was a coincidence that he was walking to Avenue 1 with Rasal and Ripon in order to sell cigarettes and simply joined a larger group headed in the same direction.[101] This was implausible. Further, Rasal and Ripon testified otherwise, admitting that they knew about the dispute with the rival syndicate at Avenue 1 and were walking with that group to Avenue 1 to address the dispute.[102]

49 Second, when Manik's attention was brought to a frame at "21:47:14" of the Bus Camera Footage which showed the reflective surface of a rectangular shape near his body, Manik claimed that the object was not in his hand, but was

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99 NE 25 February 2020 at p 7, ln 19–27.

100 NE 14 January 2020 at p 5, ln 9–10.

101 NE 25 February 2020 at p 8, ln 1–11.

102 NE 10 January 2020 at p 37, ln 1–3 (Rasal); NE 14 January 29020 at p 5, ln 3–6 (Ripon).

on the ground.[103] This frame was reproduced in P192. Manik claimed that his hand was at his waist, so the object could not have been in his hand as it was lower than that, nearer to his knee.[104] This was a lie. The footage clearly showed Manik's hand movements, and the object in question was in his hand at the time. More fundamentally, if the object was on the ground, it would have been there throughout the footage. While I had found above that the Bus Camera Footage did not prove that he was holding a chopper, I also found that the present lie was motivated by a fear of the truth that he was, in fact, holding a chopper. The denial that he was holding the object that reflected some light – whether a wooden stick, chopper or otherwise – was a blatant attempt to diminish his role in the incident. This was a lie that corroborated the finding that he was holding a chopper.

50 Finally, his evidence about not carrying a knife into the taxi did not withstand scrutiny. In his statement, Manik first claimed that, "it was Rasal and Fahad who actually put their knives on [his] lap because there was no space in the taxi."[105] At trial, however, he changed his evidence that it was Goni who had put a single knife in his lap. The first discrepancy was as to the number of knives. The second discrepancy was as to the identity of the person who had put the knife in his lap. Rasal was never in the taxi. Manik's explanation that he was confused and that he had mistaken Mamun for "Rasal" could not be believed because, on his own account, he had met Rasal and Ripon earlier and had gone to Avenue 1 together that evening.[106] He clearly knew who Rasal was and there

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103 NE 25 February 2020 at p 22, ln 27–29.

104 NE 25 February 2020 at p 68, ln 3–18.

105 P186 at para 8.16: AB at p 260.

106 NE 25 February 2020 at p 33, ln 19–21.

was no reason for him to mistake Mamun for Rasal. This was especially so when he then sought to give detailed evidence on the order of seating in the taxi.[107] Further, he candidly explained at trial that he was contending at trial that it was Goni who had put the chopper in his lap because he had heard Goni testify to having a chopper in the taxi at trial.[108]

51 These three assertions – that he was not involved in any meeting at the Canteen; that the object was not in his hand but on the floor; and the change in his position on the knives in the taxi – were, in my judgment, deliberate lies. His assertions have been proven to be false by independent evidence. All related to material issues in relation to his carrying a chopper: that he had a role in the syndicate and was involved in the chopper distribution; that he was holding a chopper with a reflective surface at the scene; and that the knife on his lap was his own and not Goni's. The motive for these assertions must have been a fear of the truth and could be used to corroborate the Prosecution's evidence that he was carrying a chopper during the attack: see *R v Lucas (Ruth)* [1981] QB 720 at 724, approved by and applied to lies in court by *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [29]–[33].

52 Therefore, I found that Manik had in fact received a chopper at Avenue 4 prior to the incident, that he used the chopper during the incident, and that he brought that same chopper into the taxi after the incident.

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107 NE 26 February 2020 at p 1, ln 25–30.

108 NE 26 February 2020 at p 5, ln 15–19.

"Kop"

53 In that context, I come to a final category of evidence relevant to the chopper, in relation to the Bengali word "*kop*". A variety of witnesses testified that Manik had used the word "*kop*" at the discussion at East Coast Park after the incident, in the context of describing what he had done at Avenue 1 (which I discuss in detail at [66] below). The focus here is on the word "*kop*" itself. The Prosecution argued that it meant "chopped", consistent with cutting or slashing with a chopper. Ripon,[109] Fahad[110], and Goni[111] gave similar evidence (although Ripon and Fahad acknowledged that the word might have different meanings in different districts), as did Mohammad Zahurul Hasan, a Bengali interpreter who had worked for 15 years for the Singapore Police Force and helped with around 12 cases of violent crimes per year. He testified that "*kop*" refers to the act of "chopping", associated with "knives, chopper or any kind of similar nature of weapons", *ie* "sharp object[s]"[112] and not with wooden sticks or poles.[113] At the same time, the Defence argued that "*kop*" meant "hit" and could refer to using a wooden stick. Rasal's evidence was arguably consistent with the Defence's case, in that he testified that "*kop*" meant "hit".[114] Manik, when giving his EIC, tendered an extract from a Bengali-English dictionary to show the meaning of the word "*kop*" (to which the Prosecution did not raise any objections). It appears that the court interpreter accepted that "*kopa*" or "*kop*" were similar in meaning "depending on which part of Bangladesh" the words were used in, and,

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109 NE 14 January 2020 at p 32, ln 31 to p 33, ln 4.

110 NE 14 January 2020 at p 62 ln 30 to p 63, ln 2.

111 NE 15 January 2020 at p 33, ln 14–22.

112 NE 22 January 2020 at p 3, ln 1–13.

113 NE 22 January 2020 at p 3, ln 18–20.

114 NE 10 January 2020 at p 49, ln 1.

with reference to the dictionary, stated that the word "*kop*" or "*kopa*" was referring to the word "*kopano*",[115] meaning "strike with a rammer; chop up; dig up; cut to pieces; strike repeatedly with a weapon".[116]

54 In my view, the use of the word "kop" was not conclusive either way. This was because if the object had been a stick, "*kop*" would appear to have meant hit, and if it had been a chopper, it would have meant cut or slash. There was no definitive evidence that the word could not be used and was never used in the context of a stick. Because of this, the use of the term could not be taken as proof of or support that Manik used a chopper on the night in question. Hence, these various statements were not definitive of the issue of what Manik was carrying. In the context of my prior finding that he had a chopper, however, it would mean that a chopper was used to cut or slash. I return to the statements in the context of later issues to which they were relevant.

Did Manik inflict the Fatal Injury?

55 I turn to the crucial question of whether Manik had inflicted the Fatal Injury.

Bus Camera Footage

56 The Prosecution relied heavily on the Bus Camera Footage in its submissions. While the Bus Camera Footage did not show Manik inflicting the Fatal Injury, the Prosecution submitted that the inference that he did so could be drawn. The Prosecution relied upon the orientation of the Fatal Injury, an incised wound on Rahim's left leg which ran in the upper posterior to lower

115 NE 25 February 2020 at p 30, ln 7–22.

116 Exhibit D4.

anterior direction. In simpler terms, the wound ran from the top right to the bottom left on Rahim's left leg, when observed facing Rahim.

57 To facilitate analysis, I set out a summary description of the key incidents captured in the Bus Camera Footage in the following table:

S/N	Time Stamp	Description
1.	21:47:06–21:47:07	Rahim enters the scene, falling. Mitho follows soon after. Mitho begins kicking Rahim.
2.	21:47:08	Manik enters the scene. Mitho continues kicking Rahim. Mitho is standing at Rahim's head.
3.	21:47:09	Manik makes his first strike against Rahim while standing at Rahim's feet.
4.	21:47:10	Aziz enters the scene. He arrives at Rahim's feet standing to Manik's right. Manik is seen picking something up. Mitho hits Rahim, somewhere on his torso.
5.	21:47:11	Aziz makes his first strike against Rahim.
6.	21:47:12	Manik makes his second strike. Aziz also makes his second strike.
7.	21:47:13	Manik makes his third strike. Aziz also makes his third strike. It is not clear what Mitho does. Rahim starts getting up. As he does so, facing away from Aziz and Manik, both Aziz and Manik are seen making strikes.
8.	21:47:14	Rahim starts to leave. Manik starts to turn around to leave. Aziz is still trying to hit Rahim. When Manik has turned around and is leaving, the other two assailants also stop and then turn around to leave.

S/N	Time Stamp	Description
9.	21:47:15–21:47:17	Rahim runs away while the three assailants run in the same direction from which they had come.

58 Mitho was attacking Rahim's upper body and head and was therefore not responsible for the Fatal Injury. The Prosecution submitted that, as between Manik and Aziz, the relative positions of each accused person and the direction of their strikes meant that it was an irresistible inference that it was Manik who inflicted the Fatal Injury.

59 In response, the Defence argued that the Bus Camera Footage did not show that Manik inflicted the Fatal Injury. They pointed out that Rahim's legs were not in fact visible in the parts of the footage when Manik allegedly inflicted that injury (from "21:49:09" to "21:47:11"). The Bus Camera Footage, they argued, was recording in such low light and was of such a quality that the silhouette of Rahim was completely indiscernible for a period, until around "21:47:12", which was just before he stood up and ran away at around "21:47:13".

60 In my judgment, it was not possible to discern from the Bus Camera Footage that Manik was the one who had inflicted the Fatal Injury. First, as the Defence rightly pointed out, the Bus Camera Footage was not of a very high quality, which problem was compounded by the darkness of many of the scenes, rendering it difficult to discern the positions of the various limbs. Further, at some points, the view of Rahim's legs was obstructed by the bodies of the assailants. It was not clear from the Bus Camera Footage which particular slash caused the Fatal Injury.

61 In final written submissions, the Prosecution further provided a number of graphics which superimposed outlines of each person's body onto screenshots from the Bus Camera Footage. These figures were not, however, simple observations but a series of extrapolations that made assumptions about how the limbs were positioned and moved, and sought to present clear lines where the Bus Camera Footage lacked definition. For example, the Prosecution's diagram for the scene at "21:47:11" showed a detailed outline of Rahim's legs when Aziz struck him. However, on a viewing of the Bus Camera Footage, Rahim's legs were not entirely discernible at that point. The Prosecution's diagrams were a plausible interpretation of the Bus Camera Footage, but as such, they were a possibility and not a certainty. That being the case, the process for making these extrapolations and the drawing of these diagrams should have been tested as evidence in court, together with their various assumptions. These diagrams were moreover not put to Manik during trial. While Manik was cross-examined on certain scenes from the Bus Camera Footage, the graphics added interpretations to those scenes and should have been put to Manik during cross-examination. By leaving the diagrams to their final submissions, the Prosecution had deprived Manik of the opportunity of giving a specific response to the Prosecution's interpretation of and assumptions made concerning the footage. In my view, the rule in *Browne v Dunn* (1893) 6 R 67 applied to this issue, as reaffirmed by the Court of Appeal in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48] (approved in the criminal context in *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 at [66]):

> [W]here a submission is going to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put,

> the party concerned will not be allowed to make that submission.

62 Second, the Prosecution's submissions on the directions of the strikes made by each of the accused persons were also based on the Bus Camera Footage and, therefore, suffered similar limitations. The Bus Camera Footage allowed the court to observe some of the movements of the various assailants' bodies and their arms, but it was unclear how this would affect the orientations of the wounds inflicted. Apart from broad movements of the bodies, the Bus Camera Footage did not show the details of each body part, especially the full range of movement of the arms and the weapons held in the accused persons' hands. Further, elements such as the strength of the strike, the length of the swing, the angle at which the blade of the weapon contacted Rahim's flesh, and the relative orientation of Rahim's body to the strike, especially how each of these might affect the orientation of the wound inflicted, were not canvassed in evidence. The only thing offered by the Prosecution was its opinion that Manik's strikes must have inflicted the Fatal Injury and that Aziz' strikes did not. Once again, the Prosecution relied on the diagrams to show how the wounds were oriented. For the same reasons as above, I did not find it appropriate to rely on this evidence. The various submissions on the angles of the strikes and the wounds inflicted would have benefitted from expert evidence and a reconstruction of the Prosecution's hypothesis. In the absence of such evidence, there was a risk of introducing speculation based on low-quality footage.

63 Third, on a viewing of the Bus Camera Footage, I did not find it sufficiently clear to conclude that it was *only* Manik who could have inflicted the Fatal Injury. Aziz made two key strikes against Rahim.

(a) In relation to Aziz's strike at "21:47:11", that analysis was based on an assumption of where Rahim's legs were, the orientation of his

legs, and the length of the strike. The Prosecution's submission was that Aziz's swing clearly went past Rahim's legs. In my view, it was not so clear. There appeared on the face of the Bus Camera Footage to be the possibility that Rahim had in fact moved his body and legs in such a way that Aziz's weapon would have caused the Fatal Injury. Rahim's knees could be seen moving up to his body just before Aziz made his strike, and the subsequent frames lacked definition and his legs could not be clearly seen. Further, the Prosecution's diagram sought to show Aziz's weapon striking Rahim's abdomen on the left side, but no injuries on the left side of Rahim's torso was observed by Dr Chan in the autopsy. The only injury in that region was a small abrasion measuring 0.4cm x 0.4cm on the right iliac fossa, that is, near the *right* hip.[117] This lent further credence to the possibility that Aziz had struck Rahim's legs instead. In my view, there was a reasonable doubt raised by the possibility, on the Bus Camera Footage, that Aziz had struck Rahim's legs and inflicted the Fatal Injury.

(b) In relation to Aziz's strike at "21:47:12", the real possibility that Aziz's weapon had managed to strike Rahim's left leg at an angle could not be ruled out, since it was not clear that Rahim had managed to shield his left leg completely by that point. Indeed, the Prosecution's submissions were most plausible only if one were considering a stationery target. Where, as here, Rahim was struggling and moving, the inference sought by the Prosecution was not so easy to draw and gaps were left in the Prosecution's case.

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117 P162 at p 3: AB at p 63.

64 It was certainly possible, on the Bus Camera Footage, that Manik was the person responsible for the Fatal Injury; equally, Aziz could have been the person responsible. Neither could be proved beyond reasonable doubt, although it was clear that one of these two assailants must have inflicted the Fatal Injury. In the absence of sufficient evidence, or where the only evidence available required speculation and conjecture on the court's part to support the inferences sought by the Prosecution, a reasonable doubt could arise: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [59]. This was the situation in the present case.

Statements heard by other witnesses

65 The Prosecution sought to prove two statements made by Manik to other members of the syndicate, in an attempt to prove that Manik was the one who had inflicted the Fatal Injury. Oral statements made by Manik to other persons could conceivably be proved against Manik if they amounted to admissions: see ss 17(1), 18(1) and 21 of the Evidence Act (Cap 97, 1997 Rev Ed). But in the present case it was not clear if it could be reliably determined what statements were actually made. First, in relation to a statement allegedly made in the getaway taxi after the incident, Mamun claimed that Manik told Toton that someone was chopped ("*kop*"). Toton, however, was unable to remember if there was a discussion in the taxi. According to Goni, Manik said that Aziz and Mitho had chopped ("*kop*") somebody. Manik's evidence was that he said nothing in the taxi.[118] I did not find that the Prosecution had proved that Manik had made any such admission in the taxi, and in any case, these statements did not attribute the Fatal Injury to Manik.

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118 NE 25 February 2020 at p 26, ln 3–4.

66 Second, the Prosecution sought to prove a statement that was attributed to Manik when the witnesses were gathered around a table at East Coast Park. I have already indicated above (at [54]) that the word "*kop*" was equivocal and its meaning depended on the context. The following uses of the word "chopped" for "*kop*" should be understood with this finding in mind, and on the basis that I had found that Manik was armed with a chopper:

(a) According to Rasal, Manik said that he chopped somebody. He did not say who he chopped, or what he chopped with. Rahim's name was not mentioned.[119]

(b) According to Ripon, Manik said that he gave two or three chops to Rahim. One chop hit the ground and the knife was bent, and another hit Rahim's leg and this caused bleeding.[120]

(c) According to Goni, Manik said that he chopped somebody but this was not very important. He did not say who he chopped or which leg he chopped.[121]

(d) According to Toton, Manik said, "Nothing to worry about. I just did a small, regular *kop"* to Rahim. Manik did not say what he used.[122]

67 Putting aside Manik's contention as to what he said for the moment, these statements were not consistent one with the other, and, more fundamentally, there is no attribution of the Fatal Injury to Manik. Ripon was

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119 NE 10 January 2020 at p 41, ln 22–24, 30–31.

120 NE 14 January 2020 at p 17, ln 21–32.

121 NE 15 January 2020 at p 30, ln 9–17.

122 NE 16 January 2020 at p 11, ln 21–32.

the only one to testify that Manik made reference to hitting Rahim's leg, but even then, it was not clear if that was the Fatal Injury itself. In my judgment, it would be unsafe to rely on this evidence to find that Manik had inflicted the Fatal Injury.

Conclusion on attribution for the Fatal Injury

68 As such, I concluded that the Prosecution had not proved its case beyond reasonable doubt that Manik was the one who inflicted the Fatal Injury on Rahim.

69 I deal briefly with the Defence's contention that even if Manik did inflict the Fatal Injury, it was not intentionally inflicted. The Court of Appeal explained this requirement in *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR(R) 582 at [22] as follows:

> As stated in *Virsa Singh*, for an injury to fall within s 300(*c*), it must be one which, in the normal course of nature, would cause death and *must not be an injury that was accidental or unintended, or that some other kind of injury was intended.* Whether a particular injury was accidental or unintended is a question of fact which has to be determined by the court in the light of the evidence adduced and taking into account all the surrounding circumstances of the case. [emphasis added]

70 This contention is also important for my findings on the Prosecution's Alternative Case. In my view, the person who inflicted the Fatal Injury would have done so intentionally, for the following reasons:

(a) Even if Rahim was moving his legs, the wound was a long and deep one that must have been inflicted with sufficient force to cause fractures of the surrounding bone. It was clear that it could not have been an unintentional wound. The fact that Rahim was moving his legs does

not give rise to a reasonable doubt that the injury was not intentionally inflicted. The weapon must have been swung at Rahim with force.

(b) The injury was inflicted in the context of an attack when Rahim was on the floor and the assailants standing over him. There was nothing accidental about the Fatal Injury.

(c) While Dr Chan's evidence was that save for the Fatal Injury and a wound to the back, all the other incised wounds were relatively superficial, there is no objective evidence to even raise a doubt that whoever struck the Fatal Injury in particular did not do so with intention.

The Alternative Case

71 Having found that the Prosecution had not proved that Manik inflicted the Fatal Injury, I turn to the Alternative Case.

Necessity for common intention

72 As the Prosecution was unable to establish that Manik inflicted the Fatal Injury, they required the mechanism of s 34 of the Penal Code to establish Manik's liability for the offence. To rely on s 34, the Prosecution had to prove that the criminal act was done in furtherance of the common intention shared by Aziz, Mitho and Manik and that Manik had participated in the criminal act. In the present case, the requirements of criminal act and participation were not disputed. The issue was whether the infliction of the Fatal Injury was in furtherance of their common intention to cause s 300(*c*) injury.

73 I deal first with the Defence contention that because Manik was, on the Alternative Case, assumed to be a secondary offender, common intention could not be established in the absence of establishing the intention of the primary

offender. The argument was that the Prosecution was required to first prove that all three elements in *Wang Wenfeng* ([16] *supra*) were satisfied in respect of the primary offender, before considering the issue whether constructive liability could be imposed on secondary offenders, and in this case Mitho and Aziz were not arrested and tried.[123] This argument assumed that s 34 could only operate if a "primary offender" who was individually liable was identified and the elements of the offence first proved against that "primary offender". This was not so. Section 34 serves to impose liability on offenders in accordance with their common intention once they have participated in a particular criminal act, where the criminal act is commonly intended. This mechanism may be used where the "criminal act" has actors who assist in various parts of the act, or actors all performing the same act. The present case involved multiple actors, each of whom could have potentially been responsible for the criminal act. All are liable so long as the common intention is proved.

74 The point is well illustrated by *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*"). There, the victim had died from the accumulation of blows inflicted by the two accused, Chia and Febri, but it was "not *possible* to identify the mortal blow, let alone attribute it to either Chia or Febri" [emphasis in original]: *Chia Kee Chen* at [87]. In other words, it would not strictly have been possible to prove that either Chia or Febri was guilty of the primary offence, since it could not be proved which one had inflicted the s 300(*c*) injury. However, the Court of Appeal held that this was not relevant in *Chia Kee Chen* at [89]:

> It was thus clear that questions such as whether it was Chia or Febri who struck the mortal blow, or whether Febri had struck more blows than Chia, were ultimately irrelevant, *if* we were

123 Defence's Written Submissions at paras 71–75.

> satisfied that Chia and Febri shared a common intention to inflict the particular s 300(*c*) injuries on the Deceased (these being the craniofacial injuries which were sufficient in the ordinary course of nature to cause death) …

The Court of Appeal held that it was not necessary to identify who exactly had caused the victim's death, which meant that it was not necessary to find that *one* of them was liable under s 300(*c*) of the Penal Code, since s 300(*c*) of the Penal Code requires that the act of the accused caused death. Instead, given the nature of s 34 of the Penal Code, exactly who satisfied the *actus reus* requirements under s 300(*c*) of the Penal Code was not a necessary question to resolve, as long as the criminal act was done in furtherance of the requisite common intention. Similarly in the present case, it is the common intention to inflict the particular s 300(*c*) injury that is crucial. It was not necessary to ascertain who struck the Fatal Injury, so long as I was able to infer, beyond reasonable doubt, that the requisite common intention was shared by the participants.

Content of common intention required

75 I turn then to consider the content of the common intention required by the charge. While s 34 of the Penal Code may play different roles depending on the factual circumstance, there is no difference in the legal standard to be applied to common intention across these different situations. In the context of s 300(*c*) read with s 34 of the Penal Code, the requisite intention is the common intention to inflict s 300(*c*) injury. The Prosecution argued that the common intention only needed to be to inflict the injury, and the question of whether it was sufficient in the ordinary course of nature to cause death was to be determined objectively, similar to individual liability under the same section.

76 Several reasons militate against such a reading. First, when the Court of Appeal held that the common intention for s 300(*c*) read with s 34 of the Penal

Code was the common intention to inflict "s 300(*c*) injury", it defined the phrase as the entire concept of "bodily injury which was sufficient in the ordinary course of nature to cause death": *Daniel Vijay* ([19] *supra*) at [49].

77 Second, the Court of Appeal clearly distinguished between the elements of s 300(*c*) of the Penal Code as set out in *Virsa Singh* ([16] *supra*) and the requirements for constructive liability under s 34 of the Penal Code, holding that the former was inappropriate for constructive liability and requiring a higher degree of intention for the latter: *Daniel Vijay* at [145]. Its object in so doing was explained at [167]:

> It must be remembered that a charge of murder founded on s 300(*c*) of the Penal Code *read with s 34* (*ie*, a charge against a *secondary offender*) is not the same as a charge against the actual doer (*ie*, the *primary* offender), which would be *based on s 300(c) alone*. In the latter case, it is not necessary to consider whether the actual doer intended to cause the victim s 300(*c*) injury; instead, it is only necessary to consider whether the actual doer subjectively intended to inflict the injury which was in fact inflicted on the victim and, if so, whether that injury which was in fact inflicted on the victim and, if so, whether that injury was, on an objective assessment, sufficiently serious to amount to s 300(*c*) injury. In contrast, in the former case (*ie*, where a secondary offender is charged with murder under s 300(*c*) read with s 34), because of the express words "in furtherance of the common intention of all" in s 34, it is necessary to consider whether there was a common intention among all the offenders ***to inflict s 300(c) injury on the victim (the inflicting of such injury being the criminal act which gives rise to the offence of s 300(c) murder)***. [emphasis in original in italics; emphasis added in bold italics]

The Prosecution's position contradicted this specific holding by the Court of Appeal, since their submissions effectively applied *Virsa Singh* again to s 300(*c*) read with s 34 of the Penal Code.

78 Third, the Court of Appeal also stated expressly that, in substance, the common intention to cause s 300(*c*) injury is "the same as a common intention

to cause death by the infliction of the specific injury which was in fact caused to the victim" [emphasis added]: *Daniel Vijay* at [146]. Hence, the fatal nature of the injury had also to be commonly intended. In the same vein, in *Kho Jabing and another v Public Prosecutor* [2011] 3 SLR 634 ("*Kho Jabing*") at [32]–[35], V K Rajah JA referred to the "common intention to murder".

79 The Prosecution argued in their oral response that the approach of the Court of Appeal had shifted in *Chia Kee Chen* ([74] *supra*). I did not think so. At [46], the Court of Appeal reiterated that *Daniel Vijay* required common intention "specifically, a type of injury sufficient in the ordinary cause of nature to cause death and not any other type of injury". At [88], the Court of Appeal referred to *Daniel Vijay* once more, identifying the common intention as the intention to inflict "the particular s 300(*c*) injury or injuries". Having thus delineated "the particular s 300(*c*) injuries" the Court of Appeal then used the frame at [89], adding for good measure "(these being the craniofacial injuries which were sufficient in the ordinary course of nature to cause death)".

80 Therefore, the Prosecution's approach did not have support from the authorities. The necessary common intention under s 300(*c*) read with s 34 of the Penal Code is the common intention to inflict s 300(*c*) injury, not just a common intention to inflict injury, such injury then objectively being determined to be sufficient in the ordinary course of nature to cause death. I turn, then, to the facts.

What happened at Avenue 1?

81 The Prosecution and Defence had significantly different versions of events that took place after Manik shook Rahim's hand. The following were the key differences raised by Manik:

(a) Rahim first fled when two unknown assailants (see [15] above) attacked Rahim from the back. Manik identified the unknown assailants as part of Rahim's syndicate group;

(b) Manik did not know that the victim of the incident was Rahim, but believed that it was one of *Rahim's unknown assailants* who had earlier attacked Rahim from the back;[124]

(c) he did not know who the other two assailants who attacked Rahim together with him were at the time, and only found out that they were Aziz and Mitho later (and even then, could not confirm that they were Aziz and Mitho); and

(d) he did not know that the other two assailants were using choppers at first, but thought that they were using wooden sticks, and ran away after he saw them using the choppers.[125]

82 I start with the first assertion concerning the trigger that caused the group violence. The Prosecution witness who provided the most detailed account of how the confusion started was Ripon. Ripon testified that Aziz took out a knife and said, "Let's chop hard this son of a bitch."[126] Two of Rahim's fellow syndicate members, Badsha and Rabbi then said, "Bring chopper, we will chop them off."[127] Aziz, Mitho, the other Mitho, Manik and Goni then ran after Rahim, but Ripon and Toton ran to the other side.[128] Other witnesses gave vague

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124 NE 25 February 2020 at p 11, ln 28 – p 12 ln 2.

125 NE 26 February 2020 at p 45, ln 1–7.

126 NE 14 January 2020 at p 12, ln 11.

127 NE 14 January 2020 at p 30, ln 23.

128 NE 14 January 2020 at p 15, ln 18–31.

descriptions about someone shouting, "Police", causing everyone to dash around wildly. Manik's version was not put to any Prosecution witnesses, none of whom gave accounts consistent to his. In his cross-examination of Ripon, defence counsel appeared to accept Ripon's account, using it to support his point that there was no plan to cause injury using the choppers.[129] While counsel made a vague reference to a prior statement of facts which allegedly included the fact that Rahim was first attacked by unknown assailants, counsel's questions did not assert Manik's version of events in any meaningful manner.[130]

83 Manik's second assertion was even harder to accept. Manik's evidence was that "the whole thing was a misunderstanding".[131] According to him, he had been under the impression that he was attacking one of Rahim's unknown assailants, and not Rahim. But Rahim was lying on the ground facing upwards as Manik approached and Manik would have seen his face when he attacked. When confronted with this, Manik claimed that he was focusing on the foot, and did not notice who that person was.[132] This was rather incredible.

84 Manik's first and second assertions also contradicted the Bus Camera Footage. On Manik's account, Rahim was walking towards the taxi that was parked near the bus bearing registration number YN934.[133] On the sketch plan (P160),[134] this meant walking away from "G", where the incident occurred. At this point, the two unknown assailants allegedly attacked Rahim from the back

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129 NE 14 January 2020 at p 29, ln 7–28.

130 NE 14 January 2020 at p 30, ln 2–9.

131 NE 26 February 2020 at p 42, ln 9 - 11

132 NE 25 February 2020 at p 55, ln 9–11.

133 NE 25 February 2020 at p 46.

134 AB at p 55.

and then ran in the direction of "G". Rahim then gave chase, and fell down at around "G" or "H". Two problems arise on this account. First, the Bus Camera Footage did not capture anybody running ahead of Rahim. The Bus Camera Footage had a full field of vision covering the space between bus PA2494A and the row of buses on the other side of the carpark. From as far before the incident as the Bus Camera Footage went, starting at around "21:45:08", just under two minutes before the incident, no one was captured running ahead in the same direction as Rahim. Secondly, the distance between where Rahim was allegedly first attacked and where he fell down was a short distance, around 15m according to Manik.[135] It was entirely incredible that Manik managed to mistake Rahim, who was running from where *Manik was*, for one of the unknown assailants in that short distance, especially given that the Bus Camera Footage did not show other people running ahead of Rahim or around Rahim. There was no "crowd" as Manik alleged.[136] He clearly chased down Rahim, with no hesitation, no confusion, and with nothing interfering with his line of sight.

85 I also rejected Manik's claim that he did not know the identities of his two fellow assailants at the time. At trial, Manik had attempted to resile from his identifications of Aziz and Mitho in his statement (P186), claiming that he was just basing it on what others had told him. In particular, he claimed that an amendment to para 8.14 of his statement, which stated that Aziz and Mitho were the first to slash Rahim's back and was handwritten,[137] was in fact *not added by him*. When the Prosecution pointed out that he had signed for the amendment, he claimed that he only signed for the deletion of "a", not the addition of the

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135 NE 25 February 2020 at p 46, ln 21–26.

136 NE 25 February 2020 at p 46, ln 24

137 AB at p 260.

whole sentence. However, this allegation was not put to the statement recorder, DSP Alvin Phua Kin Jong, despite him being questioned on para 8.14 of P186,[138] nor to the interpreter for the statement, Ms Syeda RRM Sajeda.[139] Manik further claimed that he had couched his identifications with qualified language like "probably" and "likely" but that these were not recorded.[140] Again, these allegations were not put to those who might have been able to respond. The rule in *Browne v Dunn* applied here as these were allegations that the witnesses should have, as a matter of fairness, been allowed to explain or counter (see [61] above). The allegations that the statement recorder and/or the interpreter either added a sentence or failed to take note of key words like "probably" or "likely" were serious and of such a nature that they should have been allowed to respond. In the absence of that cross-examination, therefore, I found that Manik could not now suggest that the statement was incorrectly recorded.

86 In fact, on Manik's own evidence, he was acquainted with Aziz and Mitho and saw them at the Canteen in Avenue 4 that night in question, although his evidence was that he did not speak to them as he claimed that he did not know them well. On his own account, they also happened to be in the group going towards Avenue 1, and went up to talk to Toton when Toton exited the taxi. I found Manik's attempts to distance himself by claiming that he did not recognise the other two persons to be incredible. It contradicted his unqualified identification of the two other assailants in his statement. On his evidence, he would have been attacking Rahim with two strangers, which was incredible and inconsistent with the Bus Camera Footage.

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138 NE 9 January 2020 at p 29, ln 10–12.

139 NE 25 February 2020 at p 1, ln 12–13.

140 NE 25 February 2020 at p 3–10.

87 As to his claim at trial that he did not know that the other two assailants were using knives until Aziz started to attack Rahim, Manik could not be believed. First, this claim was inconsistent with the previous account given in his statement P186 at para 5.6, where he claimed that he had seen the assailant carrying a *knife* when Rahim fell down. This followed his claim at para 5.2 of his statement that Aziz and Mitho had "chopped Rahim when Rahim was running away", resulting in Rahim falling down.[141] His account at trial, however, pushed back the timing of when he realised that there were knives involved to a later point, when Manik claimed to have seen a knife in the third assailant's, *ie* Aziz's, hand before Aziz started to hit Rahim:[142]

> The third person who came, I suddenly saw there was this shining thing in his hand. Maybe it was a knife, I don't know. It was shining. So when I saw this shining thing, then I suddenly got scared that why there is knife in this whole thing. So when I saw this shining thing, I---which I understood to be a knife, then I---maybe the other persons were maybe they---it was Aziz or one of them Mithu [*sic*]. But when I understood that there was like knife involved, then I got scared and I left the place.

This account is inconsistent with his own statement in P186, since his statement implied that he had already seen the knives when Aziz and Mitho first attacked Rahim and caused him to fall. Further, his account at trial was externally inconsistent with the clear evidence that Manik continued to hit Rahim even after the third assailant arrived at Rahim. When confronted with this, he could only say that it was dark and perhaps he could not see very clearly, and reasserted that what he said was true.[143] Finally, I disbelieved this account based on my finding above that Manik had received a chopper alongside Aziz and

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141 AB at pp 256–257.

142 NE 25 February 2020 at p 12, ln 29 to p 13, ln 4.

143 NE 25 February 2020 at p 56, ln 1–6.

Mitho at Avenue 4. In my judgment, Manik knew that the other two assailants were going to use choppers when he attacked Rahim.

88 I set out my findings on the relevant events. Manik was involved with his syndicate that evening and was a part of the group that went to Avenue 1 for the purpose of confronting the rival syndicate. He had attended the meeting at Avenue 4, received instructions and a chopper, and walked with the group to Avenue 1. As such, and consistent with the testimony of the other witnesses and his own statement at paras 8.4–8.5,[144] he knew that they were intending to resolve the conflict over the sale of contraband cigarettes at Avenue 1. At Avenue 1, Aziz and Mitho spoke with Toton when he exited the taxi. Toton engaged with Rahim, and at around this time, Manik went to shake Rahim's hand. Toton suggested to Rahim to go to Avenue 6 to talk, but in a subsequent confusion, Rahim fled, and was chased down by Mitho, Manik, and Aziz, in that order. Manik knew that it was Rahim that he was attacking. They attacked Rahim, each with a chopper, and after a few seconds, Rahim managed to get up and run away, while the three assailants left. The Fatal Injury was caused by one of the three. The crucial question was whether the court could draw the inference that Manik shared the common intention to cause s 300(*c*) injury to Rahim.

Was there the requisite common intention?

89 It was a matter of evidence whether the requisite common intention could be inferred. As Sundaresh Menon CJ stated in *Muhammad Khalis bin Ramlee v Public Prosecutor* [2018] 5 SLR 449 at [42]:

> The law may require that the accused possess certain subjective states of mind for the purposes of an offence, but that does not mean that the accused's intention and knowledge cannot be

144 AB at p 258.

> judged and inferred from his objective conduct and all the surrounding circumstances. *Barring a personal admission by the accused, this will often be the only way to ascertain his state of mind.* [emphasis added]

In the specific context of common intention, it has often been noted that (*Daniel Vijay* ([19] *supra*) at [97]):

> [I]t is often difficult, if not impossible, for the Prosecution to procure direct evidence that a common intention existed between all the offenders. Thus, the existence (or otherwise) of such a common intention must frequently be inferred from the offenders' conduct and all the other relevant circumstances of the case.

*Was there any pre-arranged plan to cause s 300(*c*) injury?*

90 I first considered the Prosecution's case that there was a pre-conceived plan to cause s 300(*c*) injury to Rahim. It is useful at this juncture to recap the Prosecution's case on common intention. The Prosecution argued that the common intention to cause s 300(*c*) injury had arisen in advance of the incident or that the common intention arose, at latest, when they gave chase to Rahim. In terms of a plan to cause s 300(*c*) injury, the Prosecution highlighted (i) that the three of them were aware that the syndicate planned to fight with the rival syndicate; (ii) that the three had sufficient motive to cause s 300(*c*) injury to Rahim, because they wanted to send a deterrent message and to protect their income; and (iii) that the three of them had armed themselves with choppers in advance of the incident, and choppers, by their nature, were "apt to cause *deep incised wounds*, which are sufficient in the ordinary course of nature to cause death". The Prosecution further argued that, in any case, the common intention arose at the latest when they chased after Rahim, because (i) the three of them gave chase almost immediately when Rahim ran away and they used weapons against Rahim when he fell to the ground; (ii) all three used choppers, which

showed an intention to cause s 300(*c*) injury; and (iii) their attack on Rahim was ferocious.

91 Nevertheless, the evidence surrounding the discussion of the confrontation and the distribution of weapons suggested that there was no plan to cause s 300(*c*) injury from the outset. Ripon testified that the instructions given were that they would only fight back if the rival syndicate fought first. There was no plan to kill anyone.[145] Goni testified that at the meeting at Avenue 4, they discussed the problems caused at Avenue 1, and that they intended to go and talk to solve the problem. If talking did not work, however, then if the rival syndicate fought them, they would fight back. It was in that context that they were armed at the Canteen.[146] Toton also testified that there was no plan to kill or cause serious injury.[147] As Emon noted, it would not be in anyone's interests to attack someone, and he did not hear of any orders given to cause serious injury or to kill.[148] Even if there was a conditional intention to attack the other side if they were attacked, the plan to retaliate lacked specificity and the witnesses who testified on this issue maintained that there was no intention to kill or cause serious injury.

92 The catalyst for the incident was also unclear. The Defence did not object to the evidence given by Ripon that Aziz sparked the incident when he took out a knife and said, "Let's chop hard this son of a bitch".[149] However, Ripon's testimony on cross-examination was that there was no plan for Aziz to

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145 NE 14 January 2020 at p 20, ln 1–14.

146 NE 15 January 2020 at p 22, ln 1 – 11

147 NE 16 January 2020 at p 15, ln 11–16.

148 NE 21 January 2020 at p 12, ln 8–16.

149 NE 14 January 2020 at p 12, ln 10–11.

do what he did:[150] Aziz was just "like that. He gets into fight [*sic*] everybody---before everybody else."[151].

93 Notwithstanding the above, it was clear from the Prosecution evidence that there was a plan of *some sort*. This was discussed at the meeting at the Canteen, and weapons were distributed for that purpose. Counsel for the Defence only challenged, in this context, that the plan was to kill.

94 It is in this context that I also considered Manik's evidence which sought to distance himself from various aspects of the plan for the day. I have referred to three aspects in relation to his possession of a chopper (see [48]–[51] above). At [85]–[87], I dealt with his attempt to distance himself from Aziz and Mitho and his lie that he was unaware it was Rahim he attacked. These were clearly motivated by a fear of guilt and an ineluctable inference that he was a part of a plan to attack Rahim and injure him. The key question, therefore, was whether there was any other evidence that the plan was to cause s 300(*c*) injury.

Motive

95 The question of Manik's motive, and, relatedly, his involvement in the syndicate, was relevant. The Prosecution claimed that the syndicate had a strong incentive to send a harsh message of deterrence to all those who might challenge their business. In particular, they alleged that Manik was the "second-in-charge of sales" at Avenue 1, that he was earning a profit that he wanted to protect, and

150 NE 14 January 2020 at p 29, ln 14–23.

151 NE 14 January 2020 at p 13, ln 17–19.

that he could have worked his way up the syndicate by proving himself to the syndicate's leaders.[152]

96 Manik's own evidence was that he had been working for the syndicate for only seven days, and that he was only helping to sell cigarettes.[153] Prior to joining the syndicate, he was earning between $20 and $50 a day at his regular job. He had joined the syndicate to supplement his income.[154] He testified that he worked under Shopon who was in charge.[155] When asked about how each group at the different locations earned money and did not share the profits, he claimed that he did not know about how the money was distributed in the syndicate.[156] When the Prosecution suggested to him that he used a chopper to attack Rahim because he wanted to impress his bosses, he responded that he was only earning $10 to $15 per day from his involvement in the syndicate. As he was employed, there was no incentive for him to hurt somebody just to advance in the syndicate.[157]

97 The evidence of the other witnesses was consistent with these claims. Emon's evidence was that Manik was only involved collecting money after sales and passing the money to Shopon.[158] He recalled that Manik had been working for the syndicate for less than a month, and not very long in any case.[159]

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152 Prosecution's Written Submissions at para 1.

153 NE 26 February 2020 at p 20, ln 22–23.

154 NE 26 February 2020 at p 37, ln 26–31.

155 NE 26 February 2020 at p 38, ln 1–6.

156 NE 26 February 2020 at p 38, ln 10–16.

157 NE 26 February 2020 at p 40, ln 19–24.

158 NE 21 January 2020 at p 4, ln 7–9.

159 NE 21 January 2020 at p 11, ln 3–7.

Emon testified that he earned around $50 per day, as one of the persons in charge of Avenue 4,[160] but did not know how much Shopon and Faraque made at Avenue 1 and how much Manik received.[161] Toton stated that Manik worked at Avenue 1, but that he did not know what Manik's role was.[162]

98 The most support that the Prosecution could derive from their witnesses was from Ripon, who testified that on the evening of the incident, when Toton and Emon left Avenue 4, Manik was left in charge of the group.[163] But there was no evidence as to how or why Manik was put in charge, and what responsibilities he was given, other than to bring the group to Avenue 1, nor was there any evidence on Manik's prospects in the syndicate.

99 The two Prosecution witnesses who were well placed to give evidence on this were the leaders in the syndicate, Toton and Emon. But they did not provide any details as to Manik's position or ambitions in their testimony. Manik's direct superior Shopon, was not called as a witness. There was therefore no evidence on which to contradict Manik's claims that he was earning around $10 to $15 a day from the syndicate, and that he was working under Shopon selling cigarettes. This was a significant point, as it ran counter to the Prosecution's hypothesis that Manik was willing to attack Rahim intending to cause s 300(*c*) injury in order to protect a lucrative business and to advance his personal standing in the syndicate. Manik's case was that there was little incentive for him to commit murder on behalf of the syndicate.

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160 NE 21 January 2020 at p 3, ln 24–25.

161 NE 21 January 2020 at p 4, ln 13–15.

162 NE 16 January 2020 at p 5, ln 4–9.

163 NE 14 January 2020 at p 5, ln 9–10.

100 The Prosecution evidence did show that Manik would have an incentive to impress Toton. In assessing the above evidence, I also took into account that it would be natural for the Prosecution witnesses, given their involvement and friendship with Manik, to be circumspect with the full truth. The contraband cigarette business was seen by the syndicates as lucrative, and Manik would have had a motive to prove himself to Toton and Shopon. The issue was whether this motive led logically to an inference of the necessary intention. Even on the Prosecution case, it was difficult to understand what Manik would have achieved by sharing a common intention with Mitho and Aziz to cause an injury that could in the ordinary cause of nature be sufficient to cause Rahim's death. His motive was to impress Toton and Shopon and be given greater responsibility and share in the business. This motive would militate against a motive to cause serious injury to Rahim, which would upend all such aspirations. The greater scrutiny after such an event would detrimentally affect the syndicate's business and even his continued employment in Singapore.

Surrounding circumstances

101 Additionally, the surrounding circumstances pointed away from a finding that all three men held a common intention to cause s 300(*c*) injury. This undermined both the Prosecution's argument that there was a pre-arranged plan to cause such injury and that the common intention arose on the spot just before the offence was committed. First, the medical evidence militated against a finding that the plan (either pre-arranged or emerging on the spot) was to inflict s 300(*c*) injury. Dr Chan's evidence was that the Fatal Injury caused significant haemorrhage which was the cause of death. The remaining injuries were the following:

(a) On Rahim's lower limbs:

(i) A transverse incised wound measuring 2.7cm x 0.5cm (opposed length of 3cm), on the right thigh, which extended medially, superiorly and anteriorly over a depth of 1.5cm, terminating within the soft tissue, pictured in P91.

(ii) An oblique incised wound measuring 5cm x 0.4cm (opposed length of 5cm) on the right knee, terminating within the fat of the skin, pictured in P93.

(b) On Rahim's upper limbs:

(i) A flaying injury with skin flap measuring 5cm x 2.5cm on the left arm,[164] with a very superficial (skin-deep) oblique incised wound 6.5cm long, pictured in P101.

(ii) A transverse incised wound measuring 2cm long on the left thumb, pictured in P97.

(iii) A curvilinear incised wound with skin flap measuring 3.5cm x 2.5cm on the left index finger, with an underlying open fracture of the middle phalanx and dislocation of the distal interphalangeal joint, pictured in P97 and P99.

(c) On Rahim's back:

(i) An oblique incised wound measuring 5.5cm x 1.8cm (opposed length of 6cm) on the left lower thoracic region of the back, which extended laterally and inferiorly and terminated in the fat of the skin, pictured in P108.

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164 P163 at para 2: AB at p 71.

(ii) An oblique incised wound measuring 10cm x 2cm (opposed length of 10cm) on the left lower thoracic region of the back, extending anteriorly and superiorly over a depth of 2cm, through the full thickness of skin and incising the underlying left latissimus dorsi muscle, pictured at P108. Dr Chan explained that this was the deepest injury aside from the Fatal Injury, as it reached the muscle whereas the others were relatively superficial.[165]

(iii) An oblique superficial incised wound or abrasion measuring 13.5cm long on the right mid thoracic region of the back.

(iv) An oblique incised wound measuring 6.5cm x 1.2cm (opposed length of 7cm) on the right mid thoracic region of the back, extending directly anteriorly, terminating in the fat of the skin.

102 There were ten knife wounds in total. The wounds should be considered in the context of the strikes performed by each accused person. From the Bus Camera Footage, it can be seen that Mitho (discounting the various kicks) performed approximately two to three strikes, Manik performed three strikes, and Aziz performed five strikes. A wound on Rahim's back that reached the muscle was described as a secondary cause of death as it contributed to the haemorrhage, while the others were superficial or just skin-deep.[166] Even this more serious back wound was judged by Dr Chan to be "relatively

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165 NE 10 January 2020 at p 9, ln 6–7.

166 NE 10 January 2020 at p 9, ln 6–7.

superficial".[167] The other upper-limb injuries were "superficial" as well, with the more extensive injury being an incised wound with an underlying open fracture of the left index finger. Of the three incised wounds on the lower limb, two of them terminated in the soft tissue and fat respectively, which were relatively shallow wounds.[168] Dr Chan agreed with defence counsel on cross-examination when he framed most of the injuries as "insignificant".[169]

103 Second, the location of the wounds was pertinent. None of the incised wounds were directed at what would typically be considered "vulnerable" parts of the body, *eg* the head, the chest or the abdomen. Rather, the majority of wounds were inflicted on Rahim's limbs and back. The Bus Camera Footage did not show any attempts to strike directly at particularly vulnerable parts of Rahim's body. The attack itself began with Mitho kicking Rahim a number of times, contrary to the Prosecution's suggestion that the assailants had immediately started hacking at Rahim when he fell down.

104 The Prosecution sought to contend that it could well be that it was either the assailants' ineptitude or Rahim's defensive responses that rendered the injuries less serious than they otherwise would have been, and that the common intention could be inferred from the fact that the three assailants had armed themselves with choppers which were apt to cause "deep incised wounds, which are sufficient in the ordinary course of nature to cause death". In my view, such an inference could be drawn in a suitable case, but in the present case, the

167 NE 10 January 2020 at p 7, ln 31.

168 NE 10 January 2020 at p 11, ln 11–15.

169 NE 10 January 2020 at p 21, ln 1–2.

injuries caused militated against such an inference. The lack of serious injury other than the Fatal Injury raised a reasonable doubt that such was the case.

105 Conversely, the apparent violence of the attack and the medical evidence were at odds with each other. While the actions of the assailants captured on the Bus Camera Footage showed large arm movements from the assailants wielding choppers, the objective evidence of the injuries belied the apparent ferocity of the attack. The Prosecution contended that the attack on Rahim was intended to send a message. It was marking its territory and warding off any competitors. This argument would detract from any intention to cause a fatal injury, which would call the scene to the attention of the police and enforcement authorities. It explains, rather, the incongruity between the injuries caused and the nature of the attack. The assailants simply wished to demonstrate their force without going so far as to inflict fatal wounds. In this context, even if they were reckless as to whether a fatal injury would be caused, this would be insufficient to show common intention to do so: see *Daniel Vijay* ([19] *supra*) at [87]-[88].

106 A final indication was the timing of the exit of the three men, in the light of their perceived knowledge at the time. The attack, while apparently ferocious, relented after less than nine seconds (from "21:47:06" to "21:47:15" on the Bus Camera Footage). Rahim managed to get up and run 27m away. The assailants did not give chase. If their intent was to cause such injury as would in the ordinary course of nature be sufficient to cause death, they appeared unconcerned that they had not accomplished their objective. Manik, in particular, left the scene about one second before Aziz and Mitho did. He did so after seeing Rahim get up. Further, while Manik was running away, he turned back and would have seen that Rahim had left.

107 Viewing the evidence as a whole, the Prosecution's case that the men shared the intention to cause s 300(*c*) injury was a possibility, but such a possibility was insufficient to satisfy the burden of proof. Where there is a reasonable inference that is more favourable to the accused, the court should act in accordance with the presumption of innocence and prefer the favourable inference. After an extensive examination of the authorities in Singapore and in other jurisdictions, V K Rajah J (as he then was) summarised the law on the drawing of inferences in criminal cases in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [85]; approved by the Court of Appeal in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [34]:

> In a criminal case, proof beyond any reasonable doubt is required. Grave suspicion is no substitute for proof beyond reasonable doubt. In the same vein, moral certainty cannot replace the requirement for explicit and certain evidence. The various links in the interlocking chain of evidence must establish a complete chain that rules out any reasonable likelihood of an accused's innocence. Guilt must be the only rational inference and conclusion to be drawn from the complete chain of evidence. In assessing the circumstances, the court should discount fanciful or speculative possibilities. However, *if more than one reasonable inference can be elicited from the factual matrix, the inference most sympathetic to the accused ought to be used.* [emphasis added]

108 I therefore concluded that the Prosecution had not proven the common intention to cause s 300(*c*) injury, and thus its Alternative Case, beyond reasonable doubt.

Amendment of charge

What inference could be drawn about their common intention?

109 Notwithstanding that there was no common intention to cause s 300(*c*) injury, the intention to cause grievous hurt to Rahim was clear and I turn to explain this.

110 First, I considered whether there was evidence of a pre-arranged plan to do something less than inflict s 300(*c*) injury. Manik's conduct on that day was completely in sync with some kind of plan. The Prosecution witnesses were consistent throughout that Manik was a part of the plan to go to Avenue 1 to confront the rival syndicate. He had been armed by syndicate members together with Aziz, Mitho, and Goni. Ripon went so far as to testify that Manik had been left in charge of that group after Toton and Emon had left Avenue 4.[170] At Avenue 1 itself, Manik appeared to act without hesitation and was clearly pursuing Rahim intentionally. The Bus Camera Footage shows clearly that all three assailants were acting together. After the incident, Manik entered the taxi and none of the other persons, including Toton, raised any concerns with this. On Manik's own account, Sohel had asked him into the taxi. Later, Manik followed instructions to go to East Coast Park as well.

111 I mentioned previously the statement attributed to Manik by different witnesses (see [66] above). While the statements were not consistent one with the other, the gist of the evidence was that Manik admitted that he "chopped" ("*kop*") Rahim, even though it was unclear as to whether Manik had inflicted the Fatal Injury. In this context, Manik's evidence must be assessed, as it was telling. He said that Sohel and Fahad were angry with him, so it was clear that they had a plan, and he had not conformed to the plan or expectation. He sought to reassure them with the following, and claimed to have said to Fahad and Sohel:[171]

> Why are you being angry with him? Why are you telling me? I didn't do anything. I just---you---I had---just had a small

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170 NE 14 January 2020 at p 5, ln 9–10.

171 NE 25 February 2020 at p 27, ln 16–19.

> wooden stick and I hit him with it. I didn't do anything, why are you---just---it was a simple hit with a wooden stick.

112 I doubted this was the statement that he made on that evening. It was not put to Fahad or any of the other witnesses, although Fahad was called as a witness and said that he did not hear anything.[172] And the insertion of the "wooden stick" was to bolster his evidence about the use of the word "*kop*". But what was clear was the concession that he had made some kind of statement in response to the consternation expressed. This was similar to Toton's recollection about Manik's reassurance to him in respect of Rahim. According to Toton, Manik said, "Nothing to worry about. I just did a small, regular *kop"*.[173] Therefore, I took this exchange as evidence that there was a plan to cause hurt to a member of the rival syndicate, although not to kill. It followed that the other members of the syndicate were upset that Manik had, on their view of what had happened, gone further than what was intended. The injuries, when considered together with the concern expressed by the other members of the syndicate that there was a death, indicated a pre-arranged plan to hurt Rahim.

113 In fairness to Manik, I considered if the pre-arranged plan may have been the one which Ripon[174] and Goni[175] testified to about the Canteen conversation, that the choppers were for their own defence, only for use if attacked. This was ruled out by Mitho's and Manik's immediate reaction to Aziz's signal in the context of their meeting earlier in the evening and Manik's meeting with Toton at Avenue 1 prior to Toton confronting Rahim.

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172 NE 14 January 2020 at p 75, ln 32 to p 76, ln 1.

173 NE 16 January 2020 at p 11, ln 21–32.

174 NE 14 January 2020 at p 20, ln 1–14.

175 NE 15 January 2020 at p 22, ln 6–11.

Furthermore, common intention may be formed on the spot, just before the commission of the criminal act: see *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 442 at [60]. In my view, the intention of the men were formed prior to Toton confronting Rahim but it was clear that the intent of the three men were formed, at the very latest, as they chased and caught up with Rahim. Rahim was not armed, and sought to run away. If the plan of the three men was simply to intimidate him, it would have been completed at that point. Instead they chased in concert after him. There was no real need to use their choppers after they caught up with Rahim either. Rahim had fallen to the ground and was unarmed. When they started to use their choppers, their joint action in slashing Rahim around 10 times in total with their choppers was sufficient to show common intention to cause hurt which endangered his life. In this context and to this extent, I agree with the Prosecution that an inference may be drawn from the fact that the men were armed with choppers, which were associated with and apt to cause serious injury, and did, in this case, cause fatal injury.

114 Therefore, I found that it was beyond reasonable doubt that "Aziz", "Mitho" and Manik shared a common intention to attack Rahim with their choppers in order to cause grievous hurt.

Amended charge

115 Therefore, I considered that it was appropriate to alter the charge to one under s 326 read with s 34 of the Penal Code, pursuant to the court's power under s 128 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). In the present case, grievous hurt was caused as Rahim had died: the hurt caused was death under s 320(*aa*) of the Penal Code. The accused persons used choppers, which were instruments for cutting. In the context of grievous hurt,

the necessary common intention does not need to be to cause the particular grievous hurt inflicted, but need only be to cause an injury within the category of hurt as defined under s 320 of the Penal Code: *Arumugam Selvaraj v Public Prosecutor* [2019] 5 SLR 881 at [10]. In my view, the common intention to cause grievous hurt was satisfied given the use of the choppers, the nature of the attack, and the injuries caused. The common intention was to inflict hurt which endangered life. The criminal act, participation, and common intention elements were satisfied.

116 The amended charge was read and explained to Manik on 18 June 2020: s 128(2) of the CPC. He confirmed that he was ready to be tried on the altered charge: s 129 of the CPC. Mr Thuraisingam confirmed that he was not seeking to adduce any new evidence or to recall any witness: s 131 of the CPC. I proceeded immediately with trial as I was of the view that no prejudice would be occasioned to either the Prosecution or the Defence (s 129(3) of the CPC). Based on my findings above, I found Manik guilty of the altered charge and convicted him accordingly.

Sentencing

117 Manik was accordingly convicted on a single charge under s 326 read with s 34 of the Penal Code. At Manik's sentencing, with his consent, a second charge of theft of a roll of copper wire together with another, while being employed as a servant, under s 381 read with s 34 of the Penal Code, was taken into consideration for the purpose of sentencing.

118 The Prosecution sought a sentence of at least 15 years' imprisonment and 14 strokes of the cane. The Defence argued that a sentence of ten years' imprisonment and ten strokes of the cane would be sufficient.

119 I start with the appropriate approach to take in sentencing under s 326 of the Penal Code. I took reference from Menon CJ's decision in *Ng Soon Kim v Public Prosecutor* [2019] SGHC 247 ("*Ng Soon Kim*") at [12] which dealt with s 324 of the Penal Code. Section 324 of the Penal Code stands in relation to s 323 of the Penal Code in a similar manner as s 326 stands in relation to s 325. Hence, I took the following approach: first, to consider the indicative sentence if the charge had been under s 325 of the Penal Code, second, to consider an uplift for the nature of the dangerous means used, and third, to adjust the sentence according to the aggravating and mitigating factors. Defence counsel used a 2-step approach in his submissions based on in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") by considering the appropriate sentence with reference to *BDB* and applying an uplift for the weapon. Defence agreed that this approach was similar to the Prosecution's approach, as in any case further aggravating or mitigating factors were relevant after the uplift for the weapon used. The first step is to consider the sentence under s 325 of the Penal Code. The approach stated by the Court of Appeal in *BDB* at [55] is to first consider the seriousness of the injury and to arrive at an indicative starting sentence and then apply adjustments for culpability and aggravating and/or mitigating factors. The adjustment for aggravating and mitigating factors is to be done under the third step under *Ng Soon Kim*, so the focus in this step is to consider what the starting sentence would be under s 325 of the Penal Code, having regard to the hurt caused.

120 Here, death was caused. The Court of Appeal in *BDB* noted that in such cases, the starting point would be around eight years' imprisonment, and 12 or more strokes of the cane may be warranted: *BDB* at [76].

121 Second, I come to an uplift for the dangerous means used. These were choppers. The assailants would have been aware of serious endangerment to life

arising. Choppers are amongst the most dangerous types of weapons. By the very purpose of their invention, as the Prosecution pointed out, they are capable of cutting through bone, muscle and arteries. An uplift of three years' imprisonment was warranted.

122 The third step involved a consideration of the mitigating and aggravating factors.

123 I dealt first with the mitigating factors raised by the Defence. The Defence stated Manik was genuinely remorseful and had cooperated with investigations. I did not find that this was entirely the case. Manik denied having a chopper at the material time, which I found to be untrue. He also raised various claims in his defence at trial that were inconsistent with his recorded statement and attempted to distance himself from the attack. While I did not hold these against him in sentencing, I did not find that the evidence showed genuine remorse.

124 The Defence also argued that there was an inordinate delay in prosecuting Manik's case, noting that he had been arrested and held without bail since 30 September 2016, while his trial only commenced in January 2020. As explained in *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 at [110], however, that here is "no general proposition that any or all delays in prosecution would merit a discount in sentencing". In the present case there has been no inordinate delay nor has there been any prejudice or injustice. It was sufficient to backdate his sentence to his first date of remand.

125 At the sentencing hearing, Manik tendered a letter to the court on his personal circumstances. He claimed to be the sole breadwinner and that he has family members in Bangladesh who are dependent on him. As explained in *Lai*

Oei Miu Jenny v Public Prosecutor [1993] 2 SLR(R) 406 at [10], personal circumstances and hardship like these are not in general mitigating, short of any particularly exceptional personal circumstances, which I did not find in this case.

126 I turn to the aggravating factors in this case, and in the present case, I found quite a few. First, there was planning and premeditation. The group of three was actually part of a larger group assembled to intimidate and to outnumber the rival syndicate in the planned "discussion" with the rival syndicate. Manik and the two other assailants also received their choppers beforehand and brought them to the scene of the attack.

127 Second, a key aspect of this case was group violence, which carries a high risk of uncontrollable consequences. As V K Rajah J (as he then was) noted in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25(b)], group offences are aggravating because they generally result in greater harm, the victim is likely to be in greater fear, and group pressure to perpetuate such offences may add to their persistency, and group dynamics necessarily imply greater damage. Group offences involving syndicates also generated wider societal harm, especially in areas where there is a high concentration of residents in nearby areas. This was certainly the case here. This happened in the vicinity of the Tuas dormitories, where a high number of workers reside. As was observed by Tay Yong Kwang JC (as he then was) in *Public Prosecutor v Muhamad Hasik bin Sahar* [2002] 1 SLR(R) 1069 at [39]: "Gang fights and running street battles have absolutely no place in a civilised society."

128 A third aspect was the profit incentive in the context of a syndicate. The offence was committed as part of the contraband cigarette syndicate's confrontation with a rival syndicate. It arose from the need to maintain their turf,

and source of profits. This sort of territoriality was unacceptable, particularly in light of the severe violence it was apt to produce. The need for deterrence against the formation of syndicates, their attendant territoriality, and whatever criminal means they use to assert that territoriality was high.

129 Fourth, and coming to the specific incident, this attack was vicious and terrifying. The victim was unarmed and on the floor. He was alone and vulnerable, unable to defend himself effectively against his three assailants.

130 To account for these aggravating factors, I applied a further uplift of four years' imprisonment, bringing the total imprisonment term to 15 years. In respect of the number of strokes of the cane, an uplift was also applied on account of the weapon used and aggravating factors. Taking matters in the round and having reference to Prosecution's submissions, I added another 3 strokes of the cane. The sentence was accordingly 15 years' imprisonment and 15 strokes of the cane.

131 In terms of sentencing precedents, the Prosecution highlighted that, the most similar case that they had found, although no grounds of decision were published, was the case of *Public Prosecutor v Muhammad Faizal bin Md Jamal* HC/CC 4/2019, where the accused was charged under s 326 read with s 34 of the Penal Code. In that case, the accused was a member of a secret society, and had rallied together with other members to confront the two victims who had affronted another member of the secret society. The accused himself was not armed with a weapon, but another member, one Khalid, was. Khalid stabbed one of the victims repeatedly and the accused also joined in by punching and kicking. One victim died from the stab wounds, while the other suffered a laceration and haematoma. The accused pleaded guilty to the charge for causing hurt to the deceased victim. He was sentenced to eight years' and six months'

imprisonment and eight strokes of the cane. I agreed with the Prosecution that the present case is significantly more serious than *Muhammad Faizal*. Unlike the accused in *Muhammad Faizal*, Manik did not plead guilty. Faizal was not armed, Manik was armed with a chopper. All the members of the trio in the present case were armed with choppers and planned the attack for the specific purpose of advancing the profit aims of the syndicate. The differential, both in the imprisonment and strokes of the cane, was appropriate in my view.

132 Another case relevant – and familiar in the earlier context of common intention to cause s 300(*c*) injury – was that of Galing, the accomplice of Kho Jabing in *Kho Jabing* ([78] *supra*). The two accomplices had attacked two men as part of a robbery, one of whom subsequently died from head wounds inflicted by Kho Jabing with a piece of wood. Galing had also assaulted the deceased with a belt with an exposed metal buckle. After the attack, Galing took away the deceased's mobile phone. The Court of Appeal substituted his conviction for murder with an offence of robbery with hurt committed in furtherance of a common intention under s 394 read with s 34 of the Penal Code: *Kho Jabing* at [38]. Galing was later sentenced in respect of this substituted offence to 18 years' and 6 months' imprisonment and 19 strokes of the cane. The grounds for this decision were not reported, although the result was mentioned in *Public Prosecutor v Kho Jabing* [2013] SGHC 251 at [5]. The particular offence was different. The offence of robbery with hurt carries a higher maximum than grievous hurt with dangerous weapons in terms of a term of years, whereas s 326 provides for the possibility of life imprisonment and s 394 does not. It was nevertheless useful for comparison for reasons of overall fairness in its context of a violent group attack in public for an underlying financial reason. The present case could be said to have more serious elements of syndicate participation, planning and pre-arranged weapons.

133 I also considered the case of *Sinniah Pillay v Public Prosecutor* [1991] 2 SLR(R) 704 ("*Sinniah Pillay*"). In that case, the accused and the co-accused had conspired to cause grievous hurt to the victim. Pursuant to that conspiracy, one or more of the accused persons had splashed acid on the victim, causing several burns that resulted in his death. The accused was sentenced to ten years' imprisonment which, at the time, was the maximum term of years that could be imposed under s 326 of the Penal Code. From the evidence, it appears that the motive was revenge: *Sinniah Pillay* at [5], as the accused felt wronged by the deceased in a prior dispute. The accused hired the co-conspirators to attack the deceased for $5,000, of which $2,000 was paid. The Court of Appeal dismissed the appeal against sentence and refused to backdate the sentence to the date of remand: *Sinniah Pillay* at [27]–[29]. *Sinniah Pillay* was helpful as an example of when the maximum term of years was imposed for s 326 of the Penal Code. In my judgment, the present offence was not less serious than the offence in *Sinniah Pillay*. Death was caused, multiple people were involved, and there was an underlying dispute that the accused persons in both cases sought to resolve by violence. The present case was even more aggravated because of syndicate involvement. The sentence of 15 years' imprisonment and 15 strokes of the cane was therefore appropriate.

Conclusion

134 I therefore sentenced Manik to 15 years' imprisonment and 15 strokes of the cane. The term of imprisonment was backdated to the date of his remand, being 30 September 2016.

Valerie Thean
Judge

Kumaresan s/o Gohulabalan, Andre Chong Wei Min and Grace Chua Zhu Ern (Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam and Chooi Jing Yen (Eugene Thuraisingam LLP) for the accused.
