IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 58

Criminal Case No 41 of 2019

Between

Public Prosecutor

And

Boh Soon Ho

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Murder]
[Criminal Law] — [Special exceptions] — [Provocation]
[Criminal Law] — [Special exceptions] — [Diminished responsibility]

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Public Prosecutor
v
Boh Soon Ho

[2020] SGHC 58

High Court — Criminal Case No 41 of 2019
Pang Khang Chau J
18–20 September, 8–11 October, 22 November, 6 December 2019, 7 February 2020

20 March 2020 .

Pang Khang Chau J:

Introduction

1 The accused, Boh Soon Ho, a 51-year-old male Malaysian national, was tried before me for the murder of one Zhang Huaxiang ("the deceased"). I convicted the accused and sentenced him to imprisonment for life. The accused has appealed against my decision.

The charge

2 The charge to which the accused claimed trial states that the accused:

> … on the 21st day of March 2016, between 12.15 p.m. to 5.49 p.m., at Block 70, Circuit Road, #03-59, Singapore, did commit murder, *to wit*, by strangling one Zhang Huaxiang, female / 28 years old (D.O.B: 6 November 1987) with a towel, with the intention of causing bodily injury to the said Zhang Huaxiang, and the bodily injury intended to be inflicted is

> sufficient in the ordinary course of nature to cause death, and [the accused had] thereby committed an offence under section 300(*c*) and punishable under section 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> [italics in original]

The facts

3 The essential facts surrounding the alleged offence were largely undisputed, having been set out in an 11-page Statement of Agreed Facts filed jointly by the parties. The key elements of the factual narrative below were drawn from the Statement of Agreed Facts, supplemented where relevant by evidence that emerged at trial.

The parties' relationship

4 Sometime in 2011 or 2012, the accused and the deceased became acquainted with each other while they were working as part-time servers at the staff cafeteria of the Marina Bay Sands Resort.[1] Within a year of knowing each other, the accused asked the deceased out.[2] They continued to go out thereafter, about two to three times each week, for shopping and meals.[3] They also visited casinos and gambling ships together.[4] The accused came to address the deceased by the nickname "Princess Xiang Xiang" while the deceased called the accused by the nickname "Foodie".[5]

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1 Statement of agreed facts ("SOAF"), para 4.

2 Transcript, 8 October 2019, p 13, lines 6 to 12.

3 SOAF, para 4; Transcript, 8 October 2019, p 14, lines 5 to 6.

4 Transcript, 8 October 2019, p 24, line 4.

5 Transcript, 8 October 2019, p 18, lines 1 to 9.

5 Although the accused never asked the deceased to be his girlfriend,[6] his evidence was that after two to three years, he came to consider her his girlfriend.[7] When asked why he regarded the deceased as his girlfriend, he explained that it was because they went shopping together, they shared food and drink and she cared about him by, *eg* asking him to be careful at work.[8] The accused also testified that he frequently paid for her meals and purchases.[9] When questioned as to why he had never explicitly asked the deceased about the nature of their relationship, the accused's common refrain was that it was "natural" and it did not occur to him to ask.[10]

6 The accused and deceased had never been physically intimate.[11] They did not have sexual intercourse and had never kissed each other.[12] The accused's evidence was that throughout the course of the relationship, they had only held hands once. That was when they were in Chinatown during the Chinese New Year period, when the place was very crowded.[13] The accused explained that he had never held her hand on other occasions because he felt embarrassed.[14]

7 One day, out of the blue, the accused asked the deceased to marry him *if* she did not have a boyfriend, to which the deceased responded by remaining

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6 Transcript, 8 October 2019, p 18, line 10 to p 19, line 9.

7 Transcript, 8 October 2019, p 17, lines 4 to 21.

8 Transcript, 8 October 2019, p 19, lines 8 to 27.

9 Transcript, 8 October 2019, p 15, line 28 to p 16, line 20.

10 Transcript, 8 October 2019, p 18, line 27 to p 19, line 9.

11 SOAF, para 4.

12 Transcript, 8 October 2019, p 22, lines 8 to 9; p 26, lines 1 to 3.

13 Transcript, 8 October 2019, p 21, line 22 to p 22, line 7.

14 Transcript, 8 October 2019, p 22, lines 5 to 7.

silent.[15] As such, the accused and deceased began to talk about something else and he proceeded to send her home.[16] This incident occurred about three to four years after they first began going out.[17] Notwithstanding this incident, the two of them continued to go out. The accused testified that nothing changed in their relationship; they continued to go shopping for clothes and necessities, and went out for meals, all of which he continued to pay for.[18] At the trial, when questioned as to how he felt about the deceased's response to his proposal for marriage, the accused said that he "didn't feel anything much" and "didn't have much of a reaction".[19] He continued their relationship because he "liked her a lot … loved her and …was willing to give her everything" and "didn't think too much".[20]

8 Sometime in January 2016, the accused began to have suspicions that the deceased had a boyfriend as the deceased appeared to be avoiding him and the frequency of their meetings decreased.[21] On the morning of Friday, 18 March 2016, the accused went to the deceased's residence to check on her. He saw her leaving her apartment block with a man in a taxi. This made the accused feel jealous and unhappy as he believed that the deceased was "cheating" on him.[22]

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15 Transcript, 8 October 2019, p 16, lines 27 to 29; p 20, lines 25 to 26.

16 Transcript, 8 October 2019, p 21, lines 10 to 12 and 19 to 21.

17 Transcript, 8 October 2019, p 17, lines 4 to 6.

18 Transcript, 8 October 2019, p 23, lines 7 to 13.

19 Transcript, 8 October 2019, p 21, lines 11 to 12.

20 Transcript, 8 October 2019, p 23, lines 16 to 17.

21 Transcript, 8 October 2019, p 25, lines 13 to 18; p 26, lines 8 to 31.

22 SOAF, para 5.

Events leading to the death of the deceased

9 Over that weekend, the accused and the deceased arranged to have a steamboat lunch at the accused's apartment on Monday, 21 March 2016.[23] On the day in question, the deceased arrived at the accused's apartment at about 1.00 pm.[24] The apartment had two bedrooms. The accused was one of the three tenants of the apartment.[25] He shared a bedroom with his landlord while the other two tenants shared the other bedroom.[26] The landlord would only stay at the apartment occasionally.[27] The accused was alone in the apartment when the deceased arrived.[28] They had their lunch in the living room as they watched the television and chatted.[29] Sometime during lunch, the deceased asked the accused for $1,000 because she wanted to gamble at a casino. The accused replied that he did not have that much money on him, to which the deceased responded by scolding him and calling him "useless foodie".[30] The accused testified that while he was very angry, he did not want to quarrel with the deceased as they would then not be able to enjoy their lunch.[31]

10 After lunch, the accused washed the dishes while the deceased continued watching television in the living room.[32] After he was done with the dishes, the

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23 SOAF, para 6; Transcript, 8 October 2019, p 30, lines 15 to 20.

24 SOAF, para 8.

25 Agreed Bundle ("AB") 248, para 17.

26 AB 250, para 22.

27 *Ibid*.

28 AB 248, para 18.

29 SOAF, para 8; AB 242, para 4.

30 Transcript, 8 October 2019, p 31, line 21 to p 32, line 25; AB 242, para 5.

31 Transcript, 8 October 2019, p 32, lines 26 to 28.

32 SOAF, para 8.

accused returned to the living room to watch the television with the deceased. After a while, the deceased went to the accused's bedroom to doll herself up.[33]

11 The accused then entered the bedroom, hugged the deceased from behind and asked her for sex.[34] The deceased replied "crazy, get lost" in Mandarin.[35] The accused testified that he was very angry because he did not expect her to turn down his request or for her to call him crazy.[36]

12 Nevertheless, the accused pushed her onto his bed and began kissing and touching her. According to the accused, the deceased did not initially reject him but as he tried to insert his tongue into her mouth, she threatened to bite off his tongue. When the accused tried to kiss her again, she started shouting, which caused the accused to be afraid. The accused used his hands to cover her mouth and let go when she stopped shouting.[37] Both of them then sat quietly at the edge of the accused's bed for about ten minutes before the accused began touching the deceased again. He inserted both his hands under her blouse and touched her breasts and nipples. She reacted by pressing her hands against her bra from outside her blouse, which the accused interpreted as the deceased "not resist[ing] much".[38]

13 After a while, the deceased got up and went to the living room to watch the television. The accused followed her into the living room and, after about

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33 Transcript, 8 October 2019, p 34, lines 11 to 19.

34 AB 242, para 6.

35 AB 242, para 6; Transcript, 8 October 2019, p 34, lines 25 to 31.

36 Transcript, 8 October 2019, p 35, lines 1 to 6.

37 AB 242 to 243, para 6.

38 ABD 243, para 7.

15 minutes, asked the deceased to go home. The deceased reacted by proceeding towards the bedroom.[39] When asked in court why the deceased went to the bedroom when he asked her to go home, the accused suggested that it was probably to retrieve her handbag from the bedroom.[40]

14 As the deceased approached the bedroom, the accused walked briskly towards her and locked his right arm around her neck. He then dragged her into the bedroom and they fell onto his bed. After about 20 seconds, the accused released his right arm as the deceased said that she was out of breath. The deceased had urinated on herself during the struggle and both the deceased's skirt and the accused's pants were wet. The deceased proceeded to comb her hair, after which she sat quietly on the foldable massage chair which was located in front of the table in the bedroom. The accused sat on the edge of the bed, facing the deceased. In his statements, the accused said that "her legs were trembling" and "[he] knew she was frightened".[41]

15 After some time, the accused confronted the deceased about her lies to him. The accused said that he had seen her leave her block and get into a taxi with a man at around 11.00 am on 18 March 2016 even though the deceased had told him that she had left home at around 8.00am. He asked who the man was. The deceased replied that she knew the man from the casino in Sentosa and that they had gone out on four to five occasions.[42] The accused responded saying, "I didn't expect you to be such a person."[43] The deceased then replied,

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39 *Ibid*.

40 Transcript, 8 October 2019, p 38, line 18.

41 AB 243 to 244, para 7.

42 AB 244, para 8.

43 Transcript, 8 October 2019, p 45, lines 25 to 27.

"So I can go out with you but I cannot go out with him?"[44] Upon hearing this, the accused was very angry as he did not expect her to say that to him.[45]

16 He next asked the deceased who Tian Meng was.[46] The accused had found out about Tian Meng a few years ago when he checked the deceased's phone which she had given to him for safekeeping when she went overseas.[47] The deceased said that Tian Meng was her former boyfriend in China who had just returned to China from Singapore. She added that it was normal for Tian Meng and her to be intimate, which the accused took to mean that they were having sex.[48]

17 The accused testified that this revelation made him extremely angry, and he was perspiring and shaking.[49] He then stood up and reached for a light blue bath towel which was hanging behind the bedroom door, and went to the mirror to wipe his perspiration.[50]

18 He described his feelings at the time as "like a fire reached [his] head".[51] In his statement to the police, the accused explained his anger in these terms:[52]

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44 Transcript, 8 October 2019, p 45, lines 30 to 31.

45 Transcript, 8 October 2019, p 46, lines 1 to 2.

46 Transcript, 8 October 2019, p 46, lines 4 to 5.

47 Transcript, 8 October 2019, p 46, line 28 to p 47, line 2.

48 Transcript, 8 October 2019, p 47, lines 6 to 12.

49 Transcript, 8 October 2019, p 47, line 14.

50 Transcript, 8 October 2019, p 47, lines 14 to 15.

51 Transcript, 8 October 2019, p 47, line 22.

52 AB 244, para 8.

> For the past four to five years, I had had [*sic*] spent so much money and times [*sic*] on her, yet I did not get anything in return from her.

According to the accused, he spent approximately half his income on the deceased,[53] which over the years came up to approximately $30,000.[54] When asked why he felt so angry, the accused answered:[55]

> Probably because I liked her too much. Because suddenly there was a Tian Meng that came into the picture and she said that for them to get intimate was very normal. It was hard for me to accept.

19 In his anger, the accused coiled the light blue bath towel around the deceased's neck and strangled her from behind, taking her by surprise.[56] His evidence was that he was very angry and his thoughts were fixated on the man from the casino and Tian Meng while he strangled the deceased.[57] The deceased stopped moving after struggling for a while. As noted in the Defence's reply closing submissions, it was not clear how long exactly the deceased struggled before she stopped moving.[58] In his statement to the police, the accused estimated that it was about two minutes.[59] In court, the accused modified his estimate to "[r]oughly about 1 to 2 minutes, 2 to 3 minutes very roughly".[60] When asked by defence counsel how he arrived at this timeframe, the accused

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53 AB 164, para 15.

54 AB 270, Answer 11.

55 Transcript, 8 October 2019, p 47, lines 25 to 27.

56 SOAF, para 10; AB 244, para 9.

57 Transcript, 8 October 2019, p 54, line 9.

58 Defence's reply closing submissions dated 6 December 2019 ("DRS"), para 4.

59 AB 245, para 9.

60 Transcript, 8 October 2019, p 54, line 1.

replied, "Because the IO asked me so I gave a very rough estimate. I wouldn't have been timing it then."[61]

20 After the deceased stopped moving, the accused released his grip on the towel, and the deceased's body slumped against the massage chair. He saw that her face had "turned black" and presumed that she was dead.[62]

Accused's actions after the deceased's death

21 About 10 to 15 minutes later, the accused removed the deceased's clothes and attempted to have sex with the deceased's body, but failed to achieve an erection.[63] The accused then covered the deceased's body with his blanket and proceeded to wash his and the deceased's soiled clothing. The accused went through the deceased's handbag, kept the deceased's cash and mobile phone, and disposed of her other belongings.[64]

22 The accused then made plans to leave Singapore. He contacted his supervisor at work to inform that he was returning to Malaysia for a month and would be leaving the next day. He also contacted his landlord to check whether the landlord was returning to the apartment that night. The landlord replied he would only return the following day. The accused informed the landlord that he would be moving back to Malaysia and would vacate the bedroom within the next few days.[65]

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61 Transcript, 8 October 2019, p 54, line 18.

62 AB 245, para 9.

63 SOAF, para 11.

64 SOAF, para 12.

65 SOAF, para 13.

23 The accused tried placing the deceased's body in a luggage bag for disposal in the undergrowth of the Sembawang area, but found that he could not bend the deceased's body to fit into the luggage bag as the deceased's body had already stiffened by then. The accused then thought of dismembering the deceased's body but could not muster up the courage to do so. That night, the accused slept next to the deceased's body.[66]

24 When morning came, the accused put the deceased's clothes back on her body, and covered it with the blanket.[67] The accused then called one of his friends to offer to sell some of his personal belongings. The friend accepted the offer, and the accused left the apartment with the said personal belongings to meet the friend. The accused and his friend met over breakfast, during which the friend also agreed to buy the foldable massage chair from the accused. The accused also explained to his friend that he was returning to Malaysia to start a business, as he did not feel like working in Singapore any more.[68]

25 The accused returned to the apartment with his friend to collect the foldable massage chair. After the friend left, the accused went to collect his salary from his employer. The accused returned to the apartment thereafter and packed his clothes and belongings into his luggage, including the light blue bath towel. He kissed the deceased on her forehead before locking the bedroom door, leaving the lights and the air-conditioner in the bedroom switched on.[69]

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66 SOAF, paras 14 to 15.

67 SOAF, para 16.

68 SOAF, paras 16 to 17.

69 SOAF, para 18.

26 The accused then departed Singapore for his younger sister's place in Malacca. He confessed to his sister that he had strangled the deceased to death. As his sister did not want any trouble, the accused decided to rent a bedroom of his own in an apartment in Malacca instead of staying with his sister.[70] The next day, 23 March 2016, the accused bought a Malaysian prepaid SIM card and contacted his landlord in Singapore with it, via both text messages and phone calls.[71] One of these phone calls was recorded and will be addressed later. On 4 April 2016 at around 8.00pm, the accused was arrested by the Malaysian police. He was brought back to Singapore the next day.[72]

The discovery of the body and the autopsy

27 The accused's landlord returned to the apartment at around 7.30pm on 22 March 2016. He noticed that the door to the bedroom that he shared with the accused was locked, although he could tell from the gap beneath the door that the lights and air-conditioner were switched on. He knocked on the door but there was no response. The landlord then used his key and opened the door. He noticed that there was a figure lying in the accused's bed. He thought that it was the deceased based on the figure's build and assumed that she was sleeping.[73]

28 The landlord retreated to the living room to sort out his mail before leaving for dinner. When the landlord returned to the apartment, he found that the deceased was still lying there. Standing at the entrance to the bedroom, he called out to the deceased. As the deceased did not respond, he removed the

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70 SOAF, para 19.

71 AB 256, para 36; SOAF paras 21 and 23.

72 SOAF, para 24.

73 SOAF, para 20; AB 174, paras 8 to 9.

blanket that was covering the deceased and realised that she was dead. The landlord contacted the police immediately.[74]

29 Dr Chan Shi Jia, an Associate Consultant Forensic Pathologist with the Health Sciences Authority (HSA), stated in the autopsy report of the deceased that the cause of death was manual compression of neck. She added that there was no autopsy evidence of any underlying significant medical condition that may have contributed to the death.[75]

The submissions

30 The Prosecution's case was that the requisite elements for a charge under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") were made out because the accused intended to cause manual compression of the deceased's neck, which was sufficient in the ordinary course of nature to cause death.[76] Moreover, the Prosecution submitted that the evidence suggested that the accused had in fact intended to *kill* the deceased.[77] In their view, no defences were available to the accused. The accused was not suffering from a mental disorder that diminished his responsibility and there was no grave and sudden provocation. In this regard, the Prosecution submitted that the accused and the deceased were merely platonic friends and that the accused had always been cognisant that the deceased did not regard him as a boyfriend.[78]

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74 SOAF, para 20; AB 174 to 175, paras 9 to 11.

75 AB 102.

76 Prosecution's closing submissions dated 22 November 2019 ("PCS"), paras 33 to 36.

77 PCS, para 37.

78 PCS, para 28.

31 In its written closing submissions, the Defence submitted as a preliminary point that the Prosecution had failed to prove beyond a reasonable doubt that the injury inflicted by the accused was sufficient in the ordinary course of nature to cause death.[79] Aside from the foregoing, the only other matter raised by the Defence in its written closing submissions was the partial defence of grave and sudden provocation under Exception 1 to s 300 of the PC. The Defence's written closing submissions did not attempt to put in issue whether the accused had the requisite intention to strangle the deceased. Notably, the Defence's written closing submissions did *not* raise the defence of diminished responsibility under Exception 7 to s 300 of the PC. The only reference in the Defence's written closing submissions to the accused's poor intellectual abilities was in the context of whether the alleged provocation would have been sufficiently grave for a person in the accused's position.[80]

32 The case for the Defence then took on a different complexion when it filed its reply closing submissions. First, the Defence submitted in its reply closing submissions that the Prosecution had failed to prove that the accused intended to inflict an injury sufficient in the ordinary course of nature to cause death.[81] In support of this submission, the Defence relied mainly on the lack of motive and the accused's loss of self-control.[82] Secondly, the defence of diminished responsibility was raised for the first time. In this regard, it was alleged in the Defence's reply closing submissions that the abnormality of mind

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79 Defence's closing submissions dated 22 November 2019 ("DCS"), para 2.

80 DCS, para 44.

81 DRS, para 1(i).

82 DRS, paras 2 and 14.

suffered by the accused was:[83]

> (i) a tendency to place more emotional investment in a loving relationship with a woman than the average person; and (ii) an inability to control himself in relation to severe provocations or disappointments arising out of such a loving relationship with a woman.

The issues to be decided

33 The issues to be decided were:

(a) whether the Prosecution proved each and every element of the offence under s 300(*c*) of the PC beyond reasonable doubt;

(b) whether the Defence proved the partial defence of grave and sudden provocation on the balance of probabilities; and

(c) whether the Defence proved the partial defence of diminished responsibility on the balance of probabilities.

Whether all elements of the s 300(*c*) offence proven

34 Section 300(*c*) of the PC reads as follows:

> 300. Except in the cases hereinafter excepted culpable homicide is murder—
>
> …
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; …

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83 DRS, para 16.

35 As noted recently by the Court of Appeal in *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [45]:

> … The four elements of a charge under s 300(*c*) of the PC are set out in our decision in *Kho Jabing v PP* [2011] 3 SLR 634 ("*Kho Jabing*") at [22], citing *Virsa Singh v State of Punjab* AIR 1958 SC 465 at [12]:
>
> > (a) a bodily injury must be present and objectively proved;
> >
> > (b) the nature of the injury must be objectively proved;
> >
> > (c) it must be established that the bodily injury in question had been intentionally inflicted; and
> >
> > (d) the bodily injury in question must be sufficient to cause death in the ordinary course of nature.

First and second elements: Presence and nature of bodily injury

36 The nature of the inquiry for the first two elements was explained in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") at [9] in these terms:

> It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth.

The first element thus involves merely ascertaining that bodily injury had been caused and the second element involves an inquiry into the type and extent of the injury.

37 The key part of the autopsy report reads:[84]

> **CAUSE OF DEATH:**

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84 AB 102.

(IA) MANUAL COMPRESSION OF NECK

COMMENTS:

…

2. Autopsy revealed the cause of death to be manual compression of neck, evidenced by

   a. External neck injuries

      i. Patchy bruising on the front and left lateral aspect of the neck …

      ii. An abrasion on the left postero-lateral aspect of the neck …

   b. Internal neck injuries …

      i. Thin patchy haemorrhage in the fascia of the neck.

      ii. A focal area of haemorrhage in the left sternocleidomastoid muscle (internal neck muscle).

      iii. Mucosal haemorrhage around the thyroid cartilage.

3. There were florid petechial haemorrhages on the face, conjunctival petechial haemorrhages, bilaterally, and left subconjunctival haemorrhage.

4. There were multiple bruises and a few abrasions on the left and right upper limbs and lower limbs.

5. There was no autopsy evidence of an underlying significant medical condition which may contribute to death.

…

38 There was no doubt from the autopsy report that the first element was satisfied – *ie,* that bodily injury was caused. As for the second element – *ie,* the nature of the injury – the Prosecution submitted that the relevant bodily injury

was the strangulation/compression of the neck.[85] Dr Chan gave the following evidence in court:

> (a) Whether manual compression of neck is sufficient to cause death depends on the duration and the amount of force used, among other things.[86]
>
> (b) Death from manual compression of neck occurs because of lack of oxygen entering the brain.[87]
>
> (c) The term "petechial haemorrhages", as used in paragraph 3 of the excerpt of the autopsy report quoted at [37] above, refers to pinpoint areas of bleeding under the skin caused by increased pressure resulting in bursting of very tiny blood vessels. In the case of the deceased, because the petechial haemorrhages were found around the entire face with none found below the neck, the said increased pressure would have been inflicted on the neck.[88]
>
> (d) The deceased's death was caused by manual compression of neck.[89]

39 I therefore found, in respect of the second element, that the nature of the injury was manual compression of neck, which was inflicted with such force

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85 PCS, para 35; Prosecution's reply closing submissions dated 6 December 2019, para 4.

86 Transcript, 19 September 2019, p 11, lines 12 to 18.

87 Transcript, 19 September 2019, p 11, lines 19 to 22.

88 Transcript, 19 September 2019, p 8, lines 8 to 20.

89 Transcript, 19 September 2019, p 7, line 30.

and for such duration that it caused the death of the deceased through deprivation of oxygen to the brain.

Additional observations

40 At the end of the Prosecution's case, there was initially some hesitation on defence counsel's part whether to make a submission of no case to answer. Defence counsel remarked that, while the autopsy report indicated that the cause of death was "manual compression of neck", he did not think that manual compression of neck was an injury.[90] When I asked defence counsel whether he was submitting that manual compression of neck was not an injury, defence counsel replied that he would reserve his position on the point for the Defence case.[91] When the Defence filed its written closing submissions, it no longer pursued the argument that manual compression of neck was not an injury. Instead, the Defence's written closing submissions focused on whether the injury inflicted by the accused was sufficient in the ordinary course of nature to cause the deceased's death.[92]

41 I had two remarks to make in this regard. First, as the submission made in the Defence's written closing submissions concerned only the fourth element outlined at [35] above, the submission would be dealt with in discussion below on the fourth element. Secondly, as the Defence was no longer arguing that "manual compression of neck" was not an injury, there was strictly no need for me to address the point. Nevertheless, for completeness, I would make the following brief observations. On one level, the phrase "manual compression of

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90 Transcript, 20 September 2019, p 31, lines 3 to 19.

91 Transcript, 20 September 2019, p 31, line 22 to p 32, line 1.

92 DCS, para 2.

neck" could be read as the description of an action – *ie,* the act of compressing someone's neck with one's hands. But the term "compression" can also describe a condition of the body, *eg,* as in "spinal cord compression" or "nerve compression injury". Thus understood, the phrase "manual compression of neck" would describe the condition of the neck having been compressed by hand. Section 44 of the PC defines "injury" to mean "any harm whatever illegally caused to any person, in body, mind, reputation or property". Since the condition of the neck being compressed by hand constitutes harm to the body, manual compression of neck would be an injury for the purpose of the PC.

Third element: Intention to inflict the bodily injury caused

42 On the question of the accused's intention, I noted as a preliminary point that the Prosecution submitted that the accused not only intended to cause bodily injury to the deceased by strangling her neck, he also possessed the intention to kill her.[93] The intention to kill is an element of the offence under s 300(*a*) of the PC (which is subject to the mandatory death penalty) and not an element of the offence under s 300(*c*) of the PC (which is punishable by either death or imprisonment for life). Instead, the *mens rea* for the offence under s 300(*c*) of the PC is the intention to inflict the bodily injury in question. This meant that evidence of intention to kill would not be directly relevant for determining guilt for the s 300(*c*) offence – *ie*, where evidence of the intention to inflict the bodily injury in question is lacking, it would not be open to the court to convict under s 300(*c*) even if there was intention to kill.

43 Having said that, there may be situations where evidence of intention to kill may be of indirect relevance to a charge under s 300(*c*), *eg*, as part of the

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93 PCS, para 37.

factual background against which the weight and credibility of the evidence of intention to inflict the bodily injury in question could be assessed. In the present case, given the view I had taken of the evidence of intention to inflict the bodily injury in question at [47]–[50] below, it was not necessary for me to have regard to the evidence concerning intention to kill.

Nature of the inquiry for the third element

44 The nature of the inquiry in respect of the third element was explained in *Virsa Singh* ([36] *supra*) in these terms:

> (9) … when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.
>
> (10) … if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. …
>
> (11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.
>
> …
>
> (13) … It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there

> is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.
>
> …
>
> (16) … The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. …
>
> …
>
> (17) It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. …

45 To summarise:

(a) What needs to be proved for the third element is the subjective intention of the accused (*Virsa Singh* at [9]).

(b) The relevant intention to be proved is the intention to cause the bodily injury that is found to be present on the deceased. It is irrelevant that there was no intention to cause death, or that there was no intention to inflict an injury that is sufficient in the ordinary course of nature to cause death. It is also irrelevant that the accused did not know that the act he committed was likely to cause death (*Virsa Singh* at [13]).

(c) The inquiry on whether there was intention to inflict the injury found to be present proceeds on broad lines. It extends to asking whether there was intention to strike the part of the body where the injury was found. It also extends to asking whether there was intention to strike with sufficient force to cause the kind of injury found to be present (*Virsa Singh* at [11]).

(d) The inquiry does not extend to whether the accused intended an injury of a particular degree of seriousness. Thus, it is irrelevant whether the accused knew of the seriousness of the injury. It is also irrelevant that the accused did not intend the injury to be as serious as it turned out to be (*Virsa Singh* at [16]).

(e) The accused's subjective intention is to be ascertained or inferred from the objective facts and evidence. What this means in practice is that, where it is proved that an injury was inflicted and the accused inflicted it, the natural inference would be that the accused intended to inflict the injury unless the evidence or the circumstances warrant an opposite conclusion (*Virsa Singh* at [16]).

Application to the facts

46 As noted from the discussion at [38]–[39] above, the deceased suffered manual compression of neck which was inflicted for such duration and with such force that it caused her death through deprivation of oxygen to the brain. It was undisputed that the accused inflicted the said injury.[94] In fact, the accused accepted in court that it was his use of the towel around the deceased's neck that killed the deceased.[95] Thus, applying [45(e)] above, the natural inference was that the accused intended to inflict the injury in question unless the evidence or the circumstances warranted an opposite conclusion. I therefore considered the relevant evidence and circumstances.

47 Prior to strangling the deceased with the bath towel, the accused was using the towel to wipe his perspiration while standing in front of the mirror. The evidence was that the accused then walked towards deceased.[96] Next, he looped the towel around her neck.[97] Finally, he tightened the towel around the deceased's neck to strangle her.[98] These actions were clearly not accidental or unintentional. During cross-examination, even though the accused denied that he knew the deceased would die from suffocation when he strangled her, he agreed that he intentionally looped the towel around the deceased's neck and also agreed that he intended to strangle the accused.[99]

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94 SOAF, para 10.

95 Transcript, 8 October 2019, p 47, line 17.

96 AB 289.

97 AB 244, para 9.

98 AB 245, para 9; Transcript, 10 October 2019, p 19, lines 4 to 7.

99 Transcript, 10 October 2019, p 27, lines 2 to 19.

48 I should pause here to note that I had some doubts concerning the accuracy of the evidence that the accused *walked* from the mirror to where the deceased was seated. This evidence was found in the statement given by the accused to the police on 5 April 2016.[100] I entertained such doubts notwithstanding that the accused appeared to have agreed with this part of the statement when it was read to him in court during cross-examination.[101] This was because the crime scene photographs showed that the mirror was so close to where the deceased was seated that there would have been no walking involved.[102] The accused merely needed to turn around to face the deceased in order to strangle her. However, I did not think this inaccuracy in the 5 April 2016 statement affected the analysis at [47] above. Even if the accused merely needed to turn around to face the deceased (as opposed to walking towards the deceased), the action of turning around could not, in the circumstances, be described as accidental or unintentional.

49 As for the level of force that the accused intended to apply when tightening the towel around the deceased's neck, there was no evidence that the accused intended to use less force than he actually did. In this regard, I found it significant that the accused did not cease tightening the towel around the deceased's neck until the deceased became motionless even though he knew at the time that the deceased was struggling.[103]

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100 AB 289.

101 Transcript, 9 October 2019, p 6, lines 21 to 27.

102 Exhibits P158 to P161.

103 Transcript, 10 October 2019, p 20, line 23 to p 21, line 7.

50 The accused explained that he merely wanted to scare the deceased and did not expect his actions to cause her death.[104] In keeping with what was discussed at [45(c)] above, I considered whether this meant that the accused had intended to apply less force than he in fact applied, with the implication that it was only by accident that he ended up applying sufficient force to cause the death of the deceased. I concluded that there was not enough evidence to support such a finding. First, there was simply no explanation from the accused, either in his statements to the police or in his testimony in court that he had intended to use less force than he actually did. Secondly, I was not persuaded by the accused's assertion that he merely wanted to scare the deceased. Having observed him repeat in court no less than 15 times the constant refrain that he merely wanted to scare the deceased, the assertion sounded rehearsed to me. He had not said once in his police statements or in his interview with the psychiatrist who examined him that he merely wanted to scare the deceased. When given an opportunity to explain in court why he wanted to scare her, the accused was not able to provide an explanation.[105] To round off this point, I noted that the accused had admitted in a statement to the police that the deceased's death was not accidental,[106] which statement was confirmed by the accused in court to be correct.[107]

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104 Transcript, 8 October 2019, p 47, line 32; p 48, lines 6, 15, 19, 26 and 30; p 49, lines 7, 8 and 19; p 51, lines 1, 16 and 24; p 52, lines 7 and 32; p 53, line 24; p 54, line 4; p 57, line 21.

105 Transcript, 8 October 2019, p 51, lines 17 to 24.

106 AB 268, Answer 7.

107 Transcript, 9 October 2019, p 12, line 28 to p 13, line 2; 10 October 2019, p 23, lines 12 to 13.

51 The accused also said "I had no intention" several times when giving testimony in court.[108] When understood in the context of the accused's entire testimony, it was clear that what he meant was that he had no intention to kill the deceased, and not that he had no intention to strangle her.[109]

Conclusion on the third element

52 For the reasons given above, I found that the accused intended to cause the bodily injury of manual compression of neck which was found on the deceased and which injury caused the deceased's death.

Fourth element: Whether bodily injury in question sufficient in the ordinary course of nature to cause death

53 Dr Chan testified that:

(a) the cause of the deceased's death was manual compression of neck;[110]

(b) manual compression of neck is sufficient in the ordinary course of nature to cause death;[111]

(c) whether manual compression of neck is sufficient to cause death in any particular case depends on the duration and the amount of force used, among other things;[112] and

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108 Transcript, 8 October 2019, p 47, line 16; p 48, line 6; p 51, line 23

109 Transcript, 8 October 2019, p 40, lines 13 to 16; p 41, line 6; p 57, lines 16 to 21.

110 Transcript, 19 September 2019, p 7, line 30.

111 Transcript, 19 September 2019, p 10, lines 16 to 21.

112 Transcript, 19 September 2019, p 11, lines 12 to 18.

(d) death from manual compression of neck occurs because of lack of oxygen entering the brain.[113]

54 As noted at [32] and [40] above, the Defence submitted that the Prosecution had failed to prove beyond a reasonable doubt that the injury inflicted by the accused was sufficient in the ordinary course of nature to cause death. This submission was based on the following exchange during Dr Chan's cross-examination:[114]

> Q And at paragraph 2 of your comments, you list several relevant injuries. You list some external neck injuries and some internal neck injuries. Correct?
>
> A Yes.
>
> Q These injuries by itself---these injuries are evidence of manual compression of neck. Correct?
>
> A Yes.
>
> Q None of these injuries are sufficient in the ordinary course of nature to cause death. Correct?
>
> A Yes, the injuries on their own do not cause death.

55 The third question in the foregoing exchange ("[n]one of these injuries are sufficient in the ordinary course of nature to cause death") misses the point of the inquiry under the fourth element. As noted at [35] above, the fourth element concerns whether the bodily injury in question is sufficient to cause death in the ordinary course of nature. The bodily injury *in question* in this context referred to the injury identified from the inquiries undertaken for the first three elements – *ie,* the injury which in fact caused the deceased's death and which the accused had intended to inflict. Therefore, in order for a question

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113 Transcript, 19 September 2019, p 11, lines 19 to 22.

114 Transcript, 19 September 2019, p 11, lines 23 to 31.

concerning whether an injury is sufficient in the ordinary course of nature to cause death to be relevant to the inquiry for the fourth element, the question must be directed at the injury which in fact caused death and not at any other injury. In the present case, the autopsy report identified manual compression of neck as the injury that caused death. The autopsy report did not state that the internal and external neck injuries listed in para 2.a. or 2.b. were the injuries that caused death. Instead, the autopsy report was clear that those injuries were listed merely as evidence of manual compression of neck. Consequently, the third question in the foregoing exchange had no bearing on the determination of the fourth element. It therefore followed that Dr Chan's answer to that question similarly had no bearing on the issue. Instead, the correct question to be posed was whether manual compression of neck is sufficient in the ordinary course of nature to cause death, a question which was posed by the Prosecution to Dr Chan and which Dr Chan answered in the affirmative (see [53(b)] above).

56 For the reasons given above, I found the fourth element established.

Conclusion on the elements of the s 300(c) offence

57 Given my finding that each of the four elements of the offence had been established, I concluded that the Prosecution had proven the elements of the s 300(*c*) charge beyond a reasonable doubt.

Whether partial defence of grave and sudden provocation made out

58 Exception 1 to s 300 of the PC provides:

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

The law

59 There are two distinct requirements for the defence of provocation to apply (*Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [101], citing *Seah Kok Meng v Public Prosecutor* [2001] 2 SLR(R) 24 at [21]):

(a) The accused must have been deprived of self-control by the provocation ("the subjective test").

(b) The provocation must be grave and sudden, and it has to be determined whether an ordinary person of the same sex and age as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked to lose self-control ("the objective test").

60 The deprivation of self-control at the time of the offence is the crux of the subjective test for making out a defence under Exception 1. This means that there must be no premeditation, calculation or deliberation prior to the killing. The element of loss of self-control does not require that the accused must not have been able to appreciate what he or she was doing. As noted in *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR 453 ("*Pathip*") at [39], the loss of self-control varies in intensity and the human mind has several levels and streams of consciousness.

61 As for the objective test, there is no single abstract standard of reasonableness – the conduct of the accused must be assessed by reference to the reasonable person with a broadly similar background: *Pathip* at [51]. The purpose of the objective test is to ensure a "uniform standard of self-control" so that the defence is not available to persons "who overreact because they are 'exceptionally pugnacious and bad-tempered and over-sensitive'": *Public*

Prosecutor v Kwan Cin Cheng [1998] 1 SLR(R) 434 ("*Kwan Cin Cheng*") at [65]. There are two types of characteristics the court can take into account in assessing if the provocation in question is grave: (a) characteristics affecting a similarly placed reasonable man's level of self-control (such as age and sex) and (b) characteristics affecting the gravity of the provocation. This means that the mental background of an accused person may be taken into account in assessing the gravity of the alleged provocation: *Kwan Cin Cheng* at [50], *Pathip* at [61].

62 The criterion "sudden" is more amenable to *a priori* definition and the following non-exhaustive principles can be gleaned as such (*Pathip* at [45]–[46]):

(a) The provocation should be unexpected.

(b) There is no room for premeditation and calculation. Thus, generally, the fatal blow should be causally and temporally proximate to the deprivation of self-control.

(c) Nonetheless, cumulative, repeated or continuous provocation whereby the provocation immediately preceding the act is the metaphorical last straw can also constitute sudden provocation.

Application to the facts

63 I did not find the defence of grave and sudden provocation made out on the balance of probabilities. While I accepted that the accused more likely than not lost his self-control at the time of the offence, I did not consider the alleged provocation to be sufficiently grave for the defence to succeed.

The subjective test

64 I shall first address the subjective test. The Defence submitted that the relevant provocation that triggered the accused's loss of self-control was the revelation by the deceased that it was normal for her to be intimate with Tian Meng.[115] The accused testified in court that:

(a) after hearing this revelation, he became "very, very angry", "very agitated" and "was perspiring and shaking";[116]

(b) he felt as though a fire had reached his head;[117]

(c) it was in a "moment of impulse" that he strangled the deceased with the towel;[118]

(d) as he was strangling the deceased, he was thinking about Tian Meng and the man from the casino;[119] and

(e) he was so angry that he could not control himself.[120]

65 The foregoing testimony was consistent with what the accused told his landlord in a telephone conversation on 23 March 2016, two days after the incident. In that telephone conversation, the accused informed his landlord that

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115 DCS, para 12.

116 Transcript, 8 October 2019, p 47, line 20.

117 Transcript, 8 October 2019, p 47, line 22.

118 Transcript, 8 October 2019, p 47, line 16; p 48, lines 7, 14, 18 and 30; p 49, line 7; p 50, line 18; p 51, lines 1 and 13; p 52, line 28; p 53, line 11.

119 Transcript, 8 October 2019, p 54, line 9; 10 October 2019, p 31, line 30.

120 Transcript, 10 October 2019, p 36, line 31.

he was "too impulsive" and had "acted on impulse".[121] The accused also informed the landlord that he was so angry at that point in time that it felt like "fire burning on [his] head".[122] In the statement he gave to the police on 9 April 2016, the accused related that he was "very angry and perspiring".[123] In the statement given to the police on 13 April 2016, the accused said he caused the deceased's death due to "impulsive action".[124] The accused similarly informed the psychiatrist who evaluated him that he strangled the deceased "in a moment of impulsivity".[125]

66 The only aberration was the statement given by the accused to the police on 5 April 2016 (the day on which he was transferred back from Malaysia to Singapore) where the accused was recorded as saying that he had contemplated for about five minutes before strangling the deceased. The relevant part of that statement reads:[126]

> I stood up and took the blue towel. *I walked to the mirror and contemplated for a while. I told myself if I were to strangle Hua Xiang, it would be the end of me. About 5 mins later, I walked behind Hua Xiang and coiled the blue towel around her neck.* I strangled her but I looked away. Hua Xiang was in a sitting posture while I was standing. She struggled for a while and stopped moving totally very shortly. I released my hold and Hua Xiang slummed [*sic*] onto the floor with her face up. I could see her face had turned green and I knew I had done something very wrong.
>
> [emphasis added]

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121 AB 71.

122 AB 72.

123 AB 244, para 8.

124 AB 268, Answer 7.

125 AB 164, para 16.

126 AB 289.

The Prosecution submitted that this statement demonstrated that the accused had spent some time deliberating his action and he did not spontaneously lose his self-control.[127]

67 The accused disputed the accuracy of the portion of the 5 April 2016 statement highlighted in italics in the passage quoted above.[128] In court, the accused agreed that the disputed portion of the statement was read back and interpreted to him by the recording officer.[129] When asked why he nevertheless signed the statement, he explained that he was too tired due to having insufficient rest since his arrest in Malacca on 4 April 2016. He therefore just signed the statement when asked to do so by the recording officer.[130]

68 The accused's evidence was that he was arrested in Malacca at around 8.00pm on 4 April 2016, while he was having dinner at a restaurant. He was then kept overnight in a lock-up with about ten other persons. Some of them were talking and the person beside him was snoring, as a result of which he could not sleep the whole night. He was brought to a court in Malacca the next morning, where he waited very long before beginning what he described as a long and arduous journey back to Singapore. The taking of the 5 April 2016 statement in Singapore commenced at 7.25pm and ended at 8.25pm.[131]

69 The 5 April 2016 statement was nine paragraphs long. The Defence noted that one hour was a very short time for recording a statement of such

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127 PCS, para 72(a).

128 Transcript, 9 October 2019, p 26, lines 11 to 17.

129 Transcript, 9 October 2019, p 7, lines 11 to 12; p 36, line 19.

130 Transcript, 9 October 2019, p 6, line 29; p 7, lines 12 to 13; p 36, lines 12 to 19.

131 Transcript, 8 October 2019, p 58, line 5 to p 61, line 14.

length, especially in the light of the accused's intellectual deficits and fatigued state. The Defence submitted that it was therefore likely that the statement did not capture accurately the accused's narrative.[132]

70 On balance, I was prepared to accept that the disputed portion of the 5 April 2016 statement was, in all likelihood, inaccurate. It was not necessary for me to decide whether the inaccuracy arose because the accused misspoke and gave inaccurate information to the recording officer due to his fatigued state or because the recording officer misheard the accused and therefore mis-recorded the accused's narrative. It sufficed for me to note that the disputed portion of the 5 April 2016 statement appeared to be an outlier which was inconsistent with all other statements given by the accused to the police, as well as inconsistent with his narration of events to the psychiatrist who examined him and to his landlord. Significantly, the accused's telephone conversation with his landlord took place two days after the offence and more than ten days before the 5 April 2016 statement. The accused had voluntarily called the landlord and confessed to killing the deceased. There was also no evidence that the accused knew the phone call was being recorded. Further, as noted at [48] above, it appeared that there were other inaccuracies in the 5 April 2016 statement. It was therefore unsafe to place so much weight on the 5 April 2016 statement and give no weight to the other statements.

71 The Prosecution also submitted that the accused possessed the ability to control his actions since he was "thinking about that casino guy and Tian Meng" while he was strangling the deceased and was aware that the deceased was

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132 DCS, para 23.

struggling.[133] I did not accept this submission. It was held in *Pathip* ([60] *supra*) (at [39]) that:

> (a) there was no need for the accused's mind to go completely blank or for there to be automatism to establish the loss of self-control; and
>
> (b) even where the accused appeared at some level of consciousness to be aware of what was happening during the killing, this did not, without more, mean that he did not lose self-control.

In *Pathip*, the accused similarly explained that images of the deceased in bed with another man were going through his mind while he was stabbing her and he was also aware that the deceased was struggling, but this did not prevent the court from accepting that the accused had lost his self-control.

72 The Prosecution further submitted that the conduct of the accused shortly after the murder in attempting to have sex with the deceased's corpse showed that the deceased's provocative words (and her death) had no effect on his continuing desire to have sex with her, and this constituted evidence that the accused did not lose his self-control.[134] As noted in *Pathip* at [42], whether post-killing conduct is relevant in assessing the subjective test depends on the facts of each case, as the conduct of different individuals after they recover their composure (partially or completely) after momentarily losing it can vary infinitely and is contingent on the existence of incalculable imponderables. In the present case, the evidence was that immediately after the deceased's death, the accused was in a state of shock, and it was only after the accused had 10 to

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133 PCS, para 72(b).

134 PCS, para 72(c).

15 minutes to regain his composure that the thought came to him to undress the deceased and attempt to penetrate her. In my view, this interval of 10 to 15 minutes was sufficiently long to dminish the relevance of the accused's post-killing conduct as an indicator of whether he had lost his self-control prior to the killing.

73 Therefore, I found that the subjective test for the loss of self-control was satisfied in the present case.

The objective test

74 As a starting point, I accepted that the provocation was sudden. The accused first asked the deceased about the man from the casino, whom he had seen her with. The deceased replied saying that they had gone out on four to five occasions. The accused then asked who Tian Meng was, as he suspected Tian Meng of being the deceased's ex-boyfriend, based on some messages he had seen on the deceased's phone some years ago.[135] Thus, it would have come as a surprise to the accused when he learnt that Tian Meng had been in Singapore recently and that the deceased had been sexually intimate with Tian Meng.[136]

75 Nonetheless, I did not find that the criterion of *grave* provocation was satisfied.

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135 Transcript, 8 October 2019, p 46, line 28 to p 47, line 2.

136 Transcript, 8 October 2019, p 47, lines 10 to 22.

76 The Defence submitted that the following characteristics of the accused were relevant for assessing the gravity of the provocation:[137]

(a) the accused was deeply in love with the deceased and believed that they were in a committed relationship;

(b) the accused was in a mentally fragile state as a result of his suspicions that the deceased was seeing someone else, and this mentally fragile state was compounded by the deceased scolding him for being useless and rejecting the accused's attempts to have sex with her;

(c) the accused had little to no relationship with women, which meant he over-invested in his relationship with the deceased; and

(d) the accused's low intelligence and poor social skills meant he over-invested in his relationship with the deceased and could not put the gravity of the provocation into perspective.

In the light of the factors relied on by the Defence, it was useful to examine the approach adopted by the courts in two previous cases involving similar factual situations.

77 In *Kwan Cin Cheng* ([61] *supra*), the accused and the deceased were former lovers who had a very close and sexually intimate relationship for the large part of seven years. After the deceased ended their relationship, the accused arranged a meeting with her to beg her to resume their relationship. At the meeting, when the accused shared about his suicidal thoughts, the deceased replied in a callous tone that he was "useless" and doubted if he dared to kill

137 DCS, paras 28, 31, 34, 42, 44.

himself. She also related that she was very happy with her new boyfriend, and that his death would have nothing to do with her. On hearing these words, the accused took the knife that he had planned to kill himself with had she rejected him, and stabbed her to death. The accused gave evidence that he interpreted the deceased's remark that she was very happy with her new boyfriend as meaning that she was very happy when she was in bed with her new boyfriend.

78 The Court of Appeal noted that (at [70]–[71]):

> … On the evidence, it was clear that the respondent and deceased had been lovers. The Prosecution did not challenge the appellant's evidence that *he and the deceased had treated each other as husband and wife from 1992 to 1996*, and that she had introduced him to her colleagues as her husband at a company outing in April 1996; nor did it cast doubt on his evidence that he had continued to have sexual relations with her as late as 9 September 1996. Prosecution witnesses such as Kee, the deceased's room-mate and friend, and Phang Ai Hwa, her sister, agreed that their relationship was "good" and they were a "loving couple" until July 1996 …
>
> The Prosecution contended that the respondent could not have reasonably felt provoked when the deceased disclosed that she had a new boyfriend, because their relationship had ended on 9 September 1996. But the trial judge accepted his evidence that thereafter *he still harboured hopes of persuading her to return to him, and this was his purpose behind arranging their meeting on 4 October 1996*. As the learned judge noted, nobody – including Kee and the deceased – told the respondent for a fact that the deceased had a new boyfriend. The respondent had not confronted the deceased about his suspicions because he was afraid of losing her. *Up to 9 September 1996, the deceased still met with the respondent and had sex with him*. When she ended their relationship on that day, she did not tell him she had a new boyfriend; instead, she explained that her father had objected to their relationship.
>
> [emphasis added]

In light of the above circumstances, the court found (at [72]) that the accused must have been in "an emotional, vulnerable state of mind" when he was begging the deceased to return to him. The deceased's callousness to him, along

with her disclosure that she had a new boyfriend, would also have added to his distress.

79 In *Pathip* ([60] *supra*), the accused decided to pay a visit to his girlfriend one morning after being told that she was sick at home. Instead of knocking on the front door immediately upon arriving at the deceased's apartment, he decided to peep through her bedroom window from the common corridor to check if she was asleep. To his horror, he discovered the deceased lying on her bed and kissing a man wearing a red tee shirt. The accused arranged to meet the deceased the same evening, where he confronted her about the man. He stabbed her to death after she told him that the man was a better lover than he. In its analysis of whether the alleged provocation was considered grave, the Court of Appeal noted the following facts which bear quoting (at [59]):

> It follows that the deceased's taunt that the man in the red tee shirt was a better lover than the accused ought not to be viewed in isolation, and its effects on the accused must be considered against the background of their strained relationship and the events that transpired earlier that day. *It was clear that the accused loved the deceased passionately although their relationship was nothing short of tumultuous. He has both a possessive and obsessive personality and is prone to emotional outbursts.* The accused had brought her to meet his parents, met her frequently **and often had sex with her.** He had also met both her parents, professed his love for the deceased and promised to marry her. Further, he had also manifested his commitment to her repeatedly despite the ever present turbulence in their relationship … He had bought the deceased a "Thali", a Hindu nuptial chain, to symbolise that she was his wife. **Even after the deceased made the police report against him for raping her, they reconciled and continued to see each other and again revived their intimate relationship**. In fact, on 5 July 2008, just two days before the killing, the accused and the deceased went to Sentosa and spent the night together in a tent where they had sex. In addition, *only minutes before killing her*, the accused **told the deceased's mother that he wanted to marry the deceased and "see [her] face everyday"**. He also said that he used to join gangs in the past but had changed after meeting the deceased and also started going to church every Saturday under her influence. It was clear

> that, tragically, their lives had become intensely and inextricably intertwined.
>
> [emphasis in original in italics; emphasis added in bold]

80 The court noted that the accused had confronted the deceased expecting that she would seek forgiveness for her infidelity with the other man. Instead, she angrily ridiculed him by asserting that the accused's sexual prowess was inferior to that of the man and had sought to justify her infidelity. As a result, considering "the accused's intensely passionate feelings for the deceased and the fact that he expected to reconcile with her and marry her, it was more probable than not that the deceased's taunt that the man in the red tee shirt was a 'better lover' than he transported his passions to such an extent that he entirely lost his self control momentarily" (at [61]).

81 Coming back to the factors listed at [76] above, with regard to the first factor, it was my view that the nature of the accused's and deceased's relationship militated against a conclusion that the revelation by the deceased that she was intimate with Tian Meng constituted a provocation that was objectively grave. Although it was not disputed that the accused regarded the deceased as his girlfriend,[138] the accused admitted that he never had sex with the deceased or kissed the deceased during their four-year relationship. They had only ever held hands once. The accused had never asked the deceased to be his girlfriend. In fact, when he had asked her to marry him, his own evidence was that he had said, "Xiang, *if* [you] don't have a boyfriend, please marry me." [emphasis added]. When the deceased remained silent, the accused's evidence was essentially that he did not feel much and their relationship carried on without any noticeable change. On the totality of the evidence and the

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138 SOAF, para 4.

circumstances, I found that the accused must have understood that the two of them were in a non-exclusive relationship. The somewhat unfortunate reality seemed to be that while the accused was infatuated with the deceased, any romantic interest was unrequited and their relationship was confined to them regularly going out, shorn of any form of physical intimacy as would typically be common between couples.

82 As for the second factor, while it was clear from *Kwan Cin Cheng* ([61] *supra*) and *Pathip* that the mental background of the accused is relevant (see [61] above), the factual scenario here was quite different. The claim that the accused was in a mentally fragile state was not made out on the evidence. The accused testified that, upon seeing the deceased get into the taxi with another man on 18 March 2016, he was "angry and jealous"[139] and his "mind was in a mess".[140] However, these negative feelings appeared to have dissipated when the deceased called him the next day to ask him to take leave from work on Monday, 21 March 2016 to keep her company. When asked why he agreed to take leave to go out with the deceased even though he had seen her with another man, the accused replied, "Because I really like being with her. *I didn't think too much.*" [emphasis added].[141] Nor was there evidence that the deceased calling the accused "useless foodie" during the lunch on 21 March 2016 somehow added to his mental fragility. The accused's evidence was that, even though he felt very angry, he decided not to quarrel with her as they would not be able to enjoy their lunch if they started quarrelling.[142] Finally, the accused's

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139 Transcript, 8 October 2019, p 28, line 31.

140 Transcript, 8 October 2019, p 29, line 2.

141 Transcript, 8 October 2019, p 30, line 10.

142 Transcript, 8 October 2019, p 32, lines 26 to 28.

own testimony failed to bear out the Defence's submission that the deceased's rejection of his sexual advances added to his mental fragility. While the accused testified that he was angry when the deceased replied "crazy, get lost" on his first sexual advance, his evidence was that shortly after, he felt "very bad for hurting her feelings" and felt very awkward about forcing himself on her and had thus asked her to go home. His evidence was that he was not angry with her for rejecting his advances but rather he thought he had done her wrong.[143]

83 As for the third factor, the claim that the accused had little or no relationship with women was not borne out by the accused's own evidence. He testified that he had been in four relationships before, each lasting a few months, and that the last two of these relationships were sexual.[144] He also testified that he frequented prostitutes both in Singapore and while he was in Malaysia.[145] In my view, this was not a person with little or no experience with women.

84 As for the fourth factor, the evidence was that the accused was assessed to have an IQ of 74, which placed his IQ among the lowest 4% of the population.[146] He was also given a test called Adaptive Behaviour Assessment System–2nd Edition (ABAS-II) to measure his adaptive skill relevant to everyday living, and found to have a General Adaptive Composite score in the average range and a social skills score in the below average range. The Defence submitted that this led him to overestimate his relationship with the deceased, and caused him to "treat a revelation of cheating with more gravity than a person

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143 Transcript, 8 October 2019, p 37, lines 10 to 24.

144 Transcript, 8 October 2019, pp 5 to 11.

145 Transcript, 8 October 2019, p 11, lines 21 to 31.

146 AB 321.

more accustomed to social contact would have".[147] As noted at [81] above, rather than being deluded about the nature of his relationship with the deceased, the accused understood that they in a non-exclusive relationship which was shorn of any form of physical intimacy that would typically be common between couples.

85 Taking the matters discussed at [81]–[84] above together, I did not consider that a statement that the deceased was sexually intimate with Tian Meng constituted a sufficiently grave provocation, especially in the light of the nature of the parties' relationship, where there could not have been any reasonable expectation of mutual exclusivity or sexual fidelity. Specifically, I did not think the revelation denigrated the accused in any way. Neither was the deceased suggesting that they should no longer see each other because of whatever she shared with Tian Meng or the man from the casino.

Conclusion on grave and sudden provocation

86 For the reasons given above, I found that the partial defence under Exception 1 to s 300 of the PC was not made out on the balance of probabilities.

Whether partial defence of diminished responsibility made out

87 The accused also raised the alternative defence of diminished responsibility, although this was only raised belatedly in the Defence's reply closing submissions.

147 DCS, para 44.

The law

88 Exception 7 to s 300 of the PC states:

> Exception 7.—Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

89 Three cumulative conditions must be satisfied to establish the defence of diminished responsibility (*Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") at [79], citing *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 ("*Ong Pang Siew*") at [58]):

> (a) First, the accused was suffering from an abnormality of mind ("the first limb").
>
> (b) Secondly, the abnormality: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury ("the second limb").
>
> (c) Thirdly, the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence ("the third limb").

While the second limb (*ie*, the aetiology or root cause of the abnormality) is a matter largely to be determined based on expert evidence, this is not the case with the first and third limbs, which are to be determined by the trial judge as the finder of fact: *Iskandar* at [80].

90 The scope of the first limb was most recently considered by the Court of Appeal in *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*"), where the Court of Appeal reaffirmed (at [23]) the following definition from *Regina v Byrne* [1960] 2 QB 396 (at 403):

> 'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment.

Whether there is an abnormality of mind is predicated on what the reasonable man would term as abnormal in all the circumstances. This is typically analysed in terms of three aspects of the mind's activities: the capacity to understand events, judge the rightness or wrongness of one's actions, and exercise self-control, as they will inevitably be quite accurate proxies of the extent of an offender's ability to exercise his will power to control his physical acts. However, these three indicia are not exhaustive. In principle, an offender may succeed in establishing that he was suffering from an abnormality of the mind even if he is unable to pigeonhole the abnormality he relies on into one of the three aspects of the mind just mentioned, provided he can show that his mental responsibility for his acts was substantially impaired as a result of this: *Nagaenthran* at [24]–[26].

91 In respect of the second limb, it is clear from *Iskandar* that it is meant to be read restrictively, and the onus is on the accused to identify which of the prescribed causes is applicable in his case (at [89]).

92 The third limb is concerned with the connection between the offender's abnormality of mind and his mental responsibility for his acts or omissions in relation to the offence. The requirement of *substantial* impairment means that there must be a real and material (as opposed to trivial or minimal) impairment of the accused's mental state although it need not rise to the level of amounting to an unsoundness of mind contemplated under s 84 of the PC. While medical evidence would be important in determining the presence and/or extent of impairment, whether an offender's mental responsibility was *substantially* impaired is ultimately a question of fact to be decided by the court based on all the evidence before it. The requirement of substantial impairment does not entail that the offender's abnormality of mind must be the *cause* of his offending, but merely that it had an *influence* on the offender's actions: *Nagaenthran* at [33].

The Defence's submission

93 According to the Defence, the abnormality of mind suffered by the accused was two-pronged. First, the accused had a tendency to place more emotional investment in a loving relationship with a woman than the average person. Secondly, he had an inability to control himself in relation to severe provocations or disappointments arising out of such relationships.[148]

94 The Defence next submitted that these abnormalities arose out of the arrested development of the accused's mind in three ways: (i) the accused was classified as below average in the social sphere; (ii) the accused had no positive female influence in his formative years as his mother had committed suicide when the accused was three years old and his stepmother showed him no

148 DRS, paras 16 to 19.

affection when raising him; and (iii) the accused never had a serious and emotionally committed relationship with a woman prior to his relationship with the deceased, which inhibited him from putting his relationship into proper perspective.

95 Finally, the Defence submitted that the abnormalities substantially impaired his mental responsibility for the murder charge because of his inability to process the disappointment resulting from the deceased's revelations.

Analysis

96 I start by outlining the medical evidence presented at trial. The Prosecution called two expert witnesses – Dr Stephen Phang, a psychiatrist and senior consultant at the Institute of Mental Health ("IMH"), and Dr Kenji Gwee, a senior clinical forensic psychologist at IMH. Dr Phang's evidence related primarily to the overall mental condition of the accused, including his mental state at the point of the offence, while Dr Gwee's evidence related more specifically to the question of whether the accused suffered from an intellectual disability. The Defence did not call any expert witnesses of its own.

97 Dr Phang examined the accused on a total of four occasions in April 2016 before issuing his report dated 17 May 2016. In preparing his report, Dr Phang also interviewed persons close to the accused, including his landlord and younger sister. He noted that clinically, the accused was not intellectually disabled.[149] Dr Phang's opinion at the end of the report stated:[150]

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149 AB 168.

150 AB 168, 169.

> 31. *The accused does not suffer from any mental disorder/illness. At and around the material time of the alleged offence, he retained the mental capacity to know both the nature and wrongfulness of his act,* which he admitted had resulted in the demise of the other party. He repeatedly maintained that he had acted as a consequence of his moment of anger at the time, which is a *normal, understandable emotion and reaction* in the light of the deceased's revelations to him about her relationships with other men.
>
> 32. His subsequent behavior in the aftermath of the alleged killing, particularly that of his indulging himself in the sexualized manner with the deceased's body which he consistently described, as well as his subsequent detailed formulation of plans to abscond to his Malaysian hometown in the immediate aftermath of the killing all reflect a state of mind which was deliberate, logical, nimble and *unfettered by any form of mental derangement or loss of impulse control…*
>
> [emphasis added]

98 This was corroborated by Dr Gwee's psychological report, which was prepared for the purpose of assessing the accused's intellectual functioning.[151] Dr Gwee administered a number of psychological tests on the accused. From the Comprehensive Test of Nonverbal Intelligence–2nd Edition (CTONI2), the accused was assessed to have an IQ of 74, which fell within the "poor" range of functioning.[152] From the Processing Speed Index subtests of the Wechsler Adult Intelligence Scale–4th Edition (WAIS-IV), the accused obtained an index score of 84, which put his processing speed in the "low average" range.[153] Finally, from the ABAS-II test (see [84] above), the accused obtained:

> (a) a General Adaptive Composite score of score of 95, which placed him in the "average" range of functioning;

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151 AB 320, para 1.

152 AB 321, para 14.

153 AB 321, para 15.

(b) a score of 94 for conceptual skills, which placed him in the "average" range of functioning; and

(c) a score of 87 for social skills which placed him in the "below average" range of functioning.[154]

Dr Gwee concluded that the accused did not meet the criteria for intellectual disability having regard to his IQ, adaptive functioning, and educational and employment history.

99 In court, Dr Phang testified that the accused had no abnormality of mind and was not suffering from any form of mental disorder arising from either arrested development or inherent causes or induced by disease or injury.[155] Dr Phang also testified that the anger felt by the accused upon hearing the deceased's revelation that she was intimate with another man was not due to any mental illness, mental disorder or impulse control disorder.[156]

100 In cross-examination, defence counsel did not challenge either doctor's opinion that the accused was not suffering from intellectual disability. Nor did defence counsel challenge Dr Phang's opinion that the accused had no abnormality of mind or any form of mental disorder. Similarly, Dr Phang's opinion that the accused's anger was not due to any mental illness, mental disorder or impulse control disorder also went unchallenged.

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154 AB 322, para 16.

155 Transcript, 19 September 2019, p 18, lines 20 to 31.

156 Transcript, 19 September 2019, p 19, line 9 to p 20, line 9.

First limb: Presence of abnormality of the mind

101 Given the state of the medical evidence, it was not surprising that the Defence chose not to submit that the accused was suffering from intellectual disability or any form of recognised mental disorder. Instead, the Defence chose to submit that the accused's abnormality of mind lay in his tendency to place more emotional investment in a loving relationship with a woman and his inability to control himself in relation to severe provocations or disappointments arising out of such loving relationships. The difficulty with this submission was that it was not supported by any evidence.

102 Concerning the accused's alleged tendency to place more emotional investment in a loving relationship with a woman, the Defence only led evidence concerning the accused's relationship with the deceased, and failed to lead evidence about the accused's level of emotional investment in his relationships with his four earlier girlfriends. Consequently, there was no evidence to support the view that the accused had a "tendency" to place more emotional investment in a loving relationship with a woman than the average person. Therefore, quite apart from the conceptual question of whether such a tendency could amount to an abnormality of mind, there was simply no evidence from which the court could surmise that the accused's state of mind in relation to this matter was so different from that of ordinary human beings that the reasonable man would term it abnormal.

103 Concerning the accused's alleged inability to control himself in relation to severe provocations or disappointments arising out of a loving relationship with a woman, I failed to see how the loss of self-control in the face of severe provocations or severe disappointments would amount to an abnormality of mind. It would appear to be entirely within the range of normal human

behaviour for someone to lose self-control in the face of severe provocations or severe disappointments. In any event, the evidence did not support a finding that the accused was suffering from an inability to control himself in relation to severe provocations or disappointments arising out of a loving relationship with a woman. No evidence was led about how the accused handled the failure of his four earlier relationships or how he felt about any disappointments he may have encountered in those relationships. In respect of the accused's relationship with the deceased, there was also a lack of evidence of his inability to control himself in the face of any previous provocations or disappointments.

104 I therefore found that the Defence failed to establish on the balance of probabilities that the accused was suffering from an abnormality of mind.

Second limb: Root cause of abnormality

105 Given my findings on the first limb, it was strictly not necessary for me to deal with the second limb. Nevertheless, it may be useful to point out that even if the first limb had been made out, the defence would still fail on the second limb. As noted above, the second limb is largely to be determined based on expert evidence. Given that the two experts did not identify any mental disorder or abnormality of mind which the accused was suffering from and, in particular, given that the two experts did not address their opinions to the two matters relied on by the Defence as the accused's alleged abnormality of mind, it followed that there was a complete lack of expert evidence concerning the root cause of the two matters relied on by the Defence. Given this lack of evidence, the court would not be in a position to draw any conclusions concerning the root cause of the two matters.

Third limb: Impairment of mental responsibility

106 Given my conclusions on the first and second limbs, the third limb simply did not arise for consideration.

Conclusion on diminished responsibility

107 For the reasons given above, I concluded that the defence of diminished responsibility had not been made out on the balance of probabilities.

Conclusion

108 In the light of my findings at [57], [86] and [107] above, I convicted the accused of the charge of murder under s 300(*c*) of the PC.

Sentence

109 Applying the principles laid down by the Court of Appeal in *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112, the Prosecution submitted that the present case was *not* one that so "outrage[d] the feelings of the community" as to call for the death sentence. The Prosecution noted that the accused acted without premeditation and the manner in which he killed the deceased could not be said to have crossed the threshold of acting with "viciousness or a blatant disregard for human life". The Defence associated itself with the Prosecution's submission and added that the accused was a first time offender and deeply remorseful. I accepted these submissions and sentenced the accused to imprisonment for life. As the accused was above 50 years of age, no sentence of caning was imposed.

Pang Khang Chau
Judge

Wong Kok Weng and Jason Chua for the Prosecution;
Eugene Thuraisingam, Chooi Jing Yen and Hamza Malik
(Eugene Thuraisingam LLP) for the accused.
