

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC 252

Criminal Case No 5 of 2019

Between

Public Prosecutor

And

Mohammad Rosli bin Abdul
Rahim

JUDGMENT

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

TABLE OF CONTENTS

BACKGROUND FACTS	1
THE PROSECUTION’S CASE.....	6
THE DEFENCE’S CASE	6
THE ISSUES FOR DETERMINATION	7
WHETHER AN OFFENCE UNDER S 300(C) OF THE PENAL CODE IS ESTABLISHED	7
APPLICABLE LEGAL PRINCIPLES	7
WHETHER THE ACCUSED INTENDED TO INFLICT THE FATAL STAB WOUND.....	8
<i>The Fatal Stab Wound was inflicted by an inward thrust, and not by a slashing motion.....</i>	<i>11</i>
<i>The Fatal Stab Wound was inflicted with significant force and speed.....</i>	<i>14</i>
<i>There was adequate lighting</i>	<i>14</i>
<i>The accused chose the most lethal implement in the kitchen tray.....</i>	<i>19</i>
<i>The accused had intentionally inflicted the Fatal Stab Wound.....</i>	<i>20</i>
WHETHER THE DEFENCE OF GRAVE AND SUDDEN PROVOCATION IS ESTABLISHED ON A BALANCE OF PROBABILITIES	30
APPLICABLE LEGAL PRINCIPLES	30
DEFENCE’S CASE.....	30
THE ALLEGED FIRST ALTERCATION.....	31
THE DECEASED’S AGGRESSIVE BEHAVIOUR, ARGUMENT BETWEEN THE ACCUSED AND THE DECEASED, AS WELL AS INSULTS INVOLVING THE ACCUSED’S MOTHER.....	41

WHETHER THE SUBJECTIVE TEST IS FULFILLED	45
<i>How the Subjective Test is to be applied</i>	46
<i>Application to the facts</i>	47
(1) How the Fatal Stab Wound was inflicted.....	47
(2) The accused’s awareness of the situation at the time of the offence.....	47
(3) The accused’s post-killing conduct.....	48
(4) The accused’s composure when the deceased pestered him for money	49
(5) The accused’s anti-social personality traits.....	49
(6) The accused’s sleep deprivation	50
(7) The accused’s Nitrazepam intoxication	51
(A) <i>Dr Kandasami’s evidence</i>	53
(B) <i>Dr Lee’s evidence</i>	57
(C) <i>The effect of the Nitrazepam pills consumed by the accused</i>	60
<i>Conclusion on the Subjective Test</i>	62
WHETHER THE OBJECTIVE TEST IS FULFILLED	63
<i>How the Objective Test is to be applied</i>	63
<i>Application to the facts</i>	65
CONCLUSION	67

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Public Prosecutor
v
Mohammad Rosli bin Abdul Rahim

[2021] SGHC 252

General Division of the High Court — Criminal Case No 5 of 2019
Dedar Singh Gill J
16–19, 23–26 February, 22–26 March, 4 June, 9 November 2021

9 November 2021

Judgment reserved.

Dedar Singh Gill J:

1 The accused, Mohammad Rosli bin Abdul Rahim, faces a charge under s 300(c) of the Penal Code (Cap 224, 2008 Rev Ed) (the “Penal Code”), for killing Mohammad Roslan bin Zaini (the “deceased”) on 16 August 2017 at approximately 4.30am. At the material time, the accused and the deceased were co-tenants of a unit (the “Unit”).

Background facts

2 The charge against the accused reads as follows:

That you, **MOHAMMAD ROSLI BIN ABDUL RAHIM**, on 16 August 2017, at approximately 4.30 am, at [the Unit], did commit murder by causing the death of one Mohammad Roslan Bin Zaini (M/35) (“the deceased”), *to wit*, by stabbing the deceased’s chest with a knife with a blade length of 17cm, causing the deceased to suffer a stab wound with an estimated depth of approximately 11-13 cm, which penetrated the deceased’s sternum and anterior wall of the pericardial sac, and

perforated the anterior wall of the right ventricle of the heart, 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 section 300(c), punishable under section 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

3 In the wee hours of the morning on 16 August 2017, four friends gathered in the Unit to watch movies on the television. These four people were the accused, the deceased, one Syed Muhamad Fauzi bin Yacob (“Fauzi”) and one Nur Shaffika binte Suhaidie (“Shaffika”).

4 At approximately 4.30am, the accused inflicted the injury, as stated in the charge sheet (“the Attack”), by means of a kitchen knife (“the Knife”). The Knife had a blade length of 17cm.¹

5 The deceased ran out of the Unit and was subsequently found lying in a prone position on a grass patch near the block where the Unit was situated.² At 4.55am, medics pronounced the deceased dead. At some point in time between 10.05am to 10.40am on 16 August 2017, the accused was arrested and brought into custody.³

6 On 17 August 2017, Clinical Professor Gilbert Lau (“Dr Lau”) from the Health Sciences Authority (“HSA”) conducted an autopsy on the deceased. The autopsy report dated 24 August 2017 (“the Autopsy Report”) was admitted by

¹ P305.

² ASOF at para 9.

³ ASOF at paras 26–28.

consent.⁴ There were altogether three stab wounds, and four incised wounds found on the deceased's body.⁵

7 Of significance is the stab wound on the upper part of the front of the deceased's chest,⁶ which the Autopsy Report described as follows (the "Fatal Stab Wound"):⁷

[The Fatal Stab Wound] was located on the right upper anterior chest wall, with its lower edge being situated at a height of 125 cm above the right heel. It had a slightly oblique orientation, with its upper and lower edges being situated at horizontal distances of approximately 2 cm and 3.4 cm from the midline. Both edges appeared to be sharp. The stab wound measured 5.6 cm and 6 cm in length, with its margins lax and apposed, respectively. ...

The track proceeded downwards and medially, towards the midline, to *penetrate the body of the sternum* along a segment spanning the 3rd and 4th sternocostal joints and, subsequently, the anterior wall of the pericardial sac, finally to perforate the anterior wall of the right ventricle of the heart, where it terminated at an *estimated depth of approximately 11 - 13 cm*.

[emphasis added]

The following injuries, which corresponded to the Fatal Stab Wound, were present on the deceased's thorax:⁸

1. *Slit-like penetration of the body of the sternum*, spanning the 3rd and 4th sternocostal joints, along a segment measuring 5cm in length, anteriorly.
2. A large retrosternal haematoma, measuring approximately 18x10x5 cm.
3. An incised wound, measuring 4.5 cm in length, through the anterior wall of the pericardial sac which contained a

⁴ ASOF at paras 59–60.

⁵ AB at pp 84–85.

⁶ AB at p 83.

⁷ AB at p 84.

⁸ AB at p 86.

haemopericardium comprising 200 g of blood clots and 150 ml of liquid blood.

[emphasis added]

In addition, there was a full-thickness perforation, measuring 3cm in length, through the anterior wall of the right ventricle of the heart, corresponding to the Fatal Stab Wound.⁹

8 According to the Autopsy Report, death was caused primarily by the Fatal Stab Wound.¹⁰

9 The Autopsy Report also stated that the other stab wounds and incised wounds present on the deceased's body were unlikely to have been fatal.¹¹ Nevertheless, for completeness, I set out the descriptions of these other stab wounds and incised wounds:¹²

- (a) a stab wound located obliquely across the ulnar aspect of the right mid-forearm, measuring between 6cm and 7cm in length, with an estimated depth of 13cm (the "Second Stab Wound");
- (b) a stab wound located longitudinally on the right mid-thigh, measuring between 3.2cm and 3.6cm in length, with an estimated depth of 11cm (the "Third Stab Wound");¹³
- (c) a superficial incised wound, measuring 9.5cm in length, across the right upper back (the "First Incised Wound");

⁹ AB at p 86.

¹⁰ AB at p 89.

¹¹ AB at p 89.

¹² AB at pp 84–86.

¹³ AB at p 84.

- (d) an incised wound, measuring 5cm in length and 3.5cm in depth, across the lateral aspect of the right arm (the “Second Incised Wound”);
- (e) a superficial incised wound, measuring 0.7cm in length, on the radial aspect of the distal digit of the right thumb (the “Third Incised Wound”); and
- (f) an incised wound, measuring 2.5cm in length, involving the radial and ventral aspects of the distal digit of the left thumb (the “Fourth Incised Wound”).

The Autopsy Report stated that the Third and Fourth Incised Wounds on the thumbs of the deceased were consistent with defensive injuries, and that the Second Stab Wound located at the right mid-forearm could be defensive in nature.¹⁴

10 One of the issues at trial was the effect of Nitrazepam on the accused, as the accused’s evidence was that he had consumed Nitrazepam pills prior to the Attack. Nitrazepam belongs to a class of drugs known as benzodiazepines.¹⁵ To address this issue, expert evidence from Dr G Kandasami (“Dr Kandasami”) and Dr Lee Kae Meng Thomas (“Dr Lee”) was adduced. Dr Kandasami is a Senior Consultant at the Institute of Mental Health (“IMH”). Dr Lee is a Consultant Psychiatrist with The Resilienz Clinic Pte Ltd. Dr Lee issued one report dated 11 July 2019 (“Dr Lee’s Report”), while Dr Kandasami issued three reports:

¹⁴ AB at p 89.

¹⁵ 24 February 2021 Transcript at p 50 lines 19–26.

- (a) Dr Kandasami’s report dated 2 October 2017 (“Dr Kandasami’s First Report”);
- (b) Dr Kandasami’s report dated 15 May 2018 (“Dr Kandasami’s Second Report”); and
- (c) Dr Kandasami’s report dated 26 December 2019 (“Dr Kandasami’s Third Report”).

The Prosecution’s case

11 The Prosecution’s narrative is that the accused bore a litany of grievances towards the deceased. The accused felt that the deceased was cheating him by demanding the payment of rent which he had already paid as co-tenant for the Unit. He also suspected that the deceased intended to get him arrested in order to kick him out of the Unit. Other grievances included the accused’s unhappiness with how the deceased did not treat one Rohazlin binte Jumar (“Rohazlin”) well. Rohazlin was the ex-girlfriend of the deceased, and a close friend of the accused.¹⁶ On the day of the Attack, the accused went into the kitchen, selected the most lethal instrument, returned to the room, and stabbed the deceased with the intention to teach him a lesson.¹⁷

The Defence’s case

12 The Defence submits that the accused is not guilty of murder under s 300(c) of the Penal Code. The thrust of its case is that the Fatal Stab Wound was inflicted inadvertently as a result of a missed aim. In other words, the accused did not intend to inflict the Fatal Stab Wound.¹⁸

¹⁶ PCS at paras 38–40.

¹⁷ PCS at paras 31–37.

¹⁸ DCS at paras 3, 5 and 108.

13 In the alternative, the Defence submits that the accused is entitled to rely on the partial defence of grave and sudden provocation because the Fatal Stab Wound was inflicted while the accused was deprived of self-control. If this Defence is established, the accused may be convicted for culpable homicide not amounting to murder under s 304(a) or (b) of the Penal Code.¹⁹

The issues for determination

14 There are two main issues for my determination:

- (a) whether the elements of s 300(c) of the Penal Code have been established beyond a reasonable doubt; and
- (b) whether the defence of grave and sudden provocation has been established on the balance of probabilities.

Whether an offence under s 300(c) of the Penal Code is established

Applicable legal principles

15 Section 300(c) of the Penal Code reads:

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

16 It is trite that the ingredients of the offence under s 300(c) of the Penal Code are as follows (*Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 at [32]):

¹⁹ DCS at para 108.

- (a) death has been caused to a person by an act of the accused;
- (b) that act resulting in bodily injury was done with the intention of causing that bodily injury to the deceased; and
- (c) that bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

17 The first and third elements are clearly satisfied. The accused admitted that he had inflicted the Fatal Stab Wound. The lethality of the Fatal Stab Wound, as set out in Dr Lau's Autopsy Report, remains unchallenged. The only contested issue is whether the accused had intended to inflict the Fatal Stab Wound.²⁰ This pertains to the second element.

Whether the accused intended to inflict the Fatal Stab Wound

18 The Prosecution's case is that the accused had stabbed the deceased in the chest with the Knife intentionally. Emphasis is placed on the nature of the Fatal Stab Wound.²¹ The Prosecution also points to Dr Lau's evidence that the Fatal Stab Wound could not have been caused accidentally,²² the accused's choice of weapon,²³ admissions by the accused that he intentionally wounded the deceased with the Knife,²⁴ and the presence of a motive to cause fatal injury to the deceased.²⁵

²⁰ DCS at para 3.

²¹ PCS at paras 10–13 and 25–28.

²² PCS at para 30.

²³ PCS at paras 31–34.

²⁴ PCS at paras 35–37.

²⁵ PCS at paras 38–40.

19 On the other hand, the Defence submits that the Fatal Stab Wound was inflicted accidentally.²⁶ In re-examination, the accused claimed that the accused and the deceased “were both going at each other”. When the accused swung the Knife downwards in a slashing movement in an attempt to “cut [the deceased’s] shoulder or slash his shoulder”, the deceased came towards him and the accused “accidentally poke in that area”.²⁷ “[T]hat area” refers to the deceased’s chest. The accused claimed that the deceased may be trying to “block”, and that was when the Knife “hit him”.²⁸ In other words, the Defence’s case is that the deceased likely sustained the Fatal Stab Wound when he inadvertently intercepted the trajectory of the Knife just as the accused was trying to land a blow on the deceased’s shoulder.²⁹

20 The Defence also seeks to raise a reasonable doubt that the Fatal Stab Wound was intentionally inflicted, by relying on the following facts:³⁰

- (a) the poor lighting in the Unit at the material time;
- (b) the dynamic and chaotic melee during the Attack;
- (c) the accused’s consistent position that his intention was to teach the deceased a lesson when he grabbed the Knife; and
- (d) the interplay of psychiatric factors affecting the accused at the material time.

²⁶ DCS at para 56.

²⁷ 24 March 2021 Transcript at p 12 line 10 to p 13 line 5.

²⁸ 24 March 2021 Transcript at p 13 line 17.

²⁹ DCS at para 60.

³⁰ DCS at para 72.

On the first two points, the Defence claims that as the dynamic and chaotic skirmish took place in a room with poor lighting,³¹ there is a “distinct possibility” that the Fatal Stab Wound was inflicted inadvertently.³² As for the third point, the Defence claims that the accused’s decision to take the Knife was a spontaneous one as he was unable to find a rod or pole in the short time he did a quick glance around the kitchen.³³ Finally, the Defence also asserts that the accused was under the influence of Nitrazepam intoxication at the time of the attack. This allegedly impaired the accused’s cognition, volition and judgment, thereby affecting the accused’s ability to aim with intent.³⁴

21 Having considered the evidence as a whole, I am satisfied, beyond a reasonable doubt, that the accused had intentionally inflicted the Fatal Stab Wound. Four findings of fact are pertinent to this conclusion:

- (a) the Fatal Stab Wound was inflicted by an inward thrust, and not by a slashing motion;
- (b) significant force and speed were required to cause the Fatal Stab Wound;
- (c) there was adequate lighting for the accused to see where he was stabbing, and for the deceased to see where the accused was and the movements of the accused; and
- (d) the accused chose the most lethal implement in the kitchen tray.

³¹ DCS at paras 4(b), 22, 33, 43 and 72.

³² DCS at paras 5 and 22.

³³ DCS at para 55.

³⁴ DCS at para 45.

These factual findings also render the accused’s version of events (see above at [19]) highly incredible.

22 I will begin with the evidential analysis supporting these four factual findings.

The Fatal Stab Wound was inflicted by an inward thrust, and not by a slashing motion

23 Dr Lau testified that the difference between a stab wound and an incised wound lies in the fact that a stab wound is caused by an inward thrust, such that the depth of the wound is greater than the surface dimensions on the skin, whereas an incised wound has surface dimensions on the skin that are greater than the depth of the wound.³⁵ The Fatal Stab Wound was approximately 11–13cm in depth: it penetrated the sternum as well as perforated the anterior wall of the right ventricle of the heart. Dr Lau therefore concluded that slashing could never have resulted in the Fatal Stab Wound.³⁶ Dr Lau’s testimony is eminently sensible, and I accept his evidence that the Fatal Stab Wound was caused by an inward thrust rather than a slashing motion.

24 The accused initially claimed in examination-in-chief that he had “swung” the Knife in a “criss-cross slashing action” at the deceased, and “sliced” at the deceased.³⁷ However, he subsequently conceded under cross-examination that the substantial penetration into the deceased’s chest could not have happened if he were only doing slicing and slashing actions.³⁸ In any event,

³⁵ 16 February 2021 Transcript at p 82 lines 26–32 and p 112 lines 1–3.

³⁶ 16 February 2021 Transcript at p 112 lines 22–30.

³⁷ 25 February 2021 Transcript at p 44 lines 9–30.

³⁸ 22 March 2021 Transcript at p 14 line 30 to p 15 line 3.

the Defence in its reply submissions has expressly stated that it is not disputing Dr Lau’s evidence that the Fatal Stab Wound was inflicted by a stabbing action,³⁹ even though it has placed reliance on the accused’s testimony that he was trying to cut or slash the deceased’s shoulder in its closing submissions.⁴⁰

25 Fauzi’s testimony as to how the Attack took place further fortifies my finding that the Fatal Stab Wound was inflicted by an inward thrust. Fauzi testified that the accused made punching actions towards the deceased.⁴¹ He also testified that “when [the accused] punch few times, then the blood come out”.⁴² When he subsequently came closer towards the accused to stop the fight, he saw the accused wielding the Knife and backed off.⁴³

26 Defence, in its written submissions, contends that Fauzi did not see the actual stab.⁴⁴ Indeed, Fauzi did not witness the actual stab because he did not see the Knife going into the deceased’s chest. Fauzi candidly admitted that he did not see the accused wielding the Knife initially.⁴⁵ Nonetheless, the fact remains that Fauzi witnessed the accused’s punching motions and saw blood coming out of the deceased’s chest as a result. These sufficiently show that the Fatal Stab Wound was caused by an inward thrust of the Knife, rather than a slashing motion.

³⁹ DRS at para 6.

⁴⁰ DCS at para 56.

⁴¹ 18 February 2021 Transcript at p 110 lines 2–17.

⁴² 18 February 2021 Transcript at p 106 line 16 to p 107 line 14.

⁴³ 18 February 2021 Transcript at p 107 lines 10–14.

⁴⁴ DCS at para 71(a).

⁴⁵ 19 February 2021 Transcript at p 13 lines 23–24.

27 It did not escape my attention that Fauzi admitted to consuming two pills of Nitrazepam some time after 2.00am on 16 August 2017.⁴⁶ This was approximately two hours before the accused attacked the deceased. Fauzi described that he was relaxed and sleepy after taking the pill, and felt like he was inside the movie that was playing on the television.⁴⁷ During cross-examination, he even admitted that the effect the pills had on him was to make him see or hear things that were not necessarily happening.⁴⁸

28 Nevertheless, Fauzi was confident that he did see the accused make punching actions towards the deceased. He was also confident that he saw the accused holding the Knife subsequently.⁴⁹ He was unequivocal in stating that the pills did not have any effect on his testimony in these regards.⁵⁰ Having examined Fauzi's oral testimony as a whole, I find that his testimony was clear, cogent and internally consistent. I am satisfied that despite consuming two pills of Nitrazepam approximately two hours before the Attack, Fauzi did see the accused's punching motions, blood coming out of the deceased's chest as a result, and the accused holding the Knife. In my view, the quarrel and the commotion would likely have taken Fauzi out of the relaxed state he was in.

29 I therefore find, on the basis of Dr Lau's evidence and Fauzi's testimony, that the Fatal Stab Wound was inflicted by an inward thrust as opposed to a slashing motion. For completeness, I place no weight on Shaffika's testimony

⁴⁶ 18 February 2021 Transcript at p 118 lines 2–13; 19 February 2021 Transcript at p 4 line 30 to p 5 line 4.

⁴⁷ 18 February 2021 Transcript at p 118 line 29 to p 119 line 32; 19 February 2021 Transcript at p 16 lines 17–28.

⁴⁸ 19 February 2021 Transcript at p 5 line 21 to p 6 line 1.

⁴⁹ 19 February 2021 Transcript at p 16 line 29 to p 17 line 11.

⁵⁰ 18 February 2021 Transcript at p 120 lines 3–9.

in arriving at this conclusion. Shaffika saw the accused holding the Knife at two points in time, but did not see what the accused was doing with the Knife.

The Fatal Stab Wound was inflicted with significant force and speed

30 Next, I find that significant force was required to inflict the Fatal Stab Wound. This is apparent not only from the depth of penetration (11 cm to 13cm), but also from the fact that the Knife had *fully* penetrated *solid bone*.⁵¹ As emphasised by Dr Lau, significant speed and great force are required to breach the full thickness of the sternum.⁵²

There was adequate lighting

31 The accused, Fauzi and Shaffika all testified that there was light emanating from the television, which was playing a movie.⁵³ The top three panels of the window were made of dark tinted glass which would have allowed some light from the corridor to stream into the Unit,⁵⁴ even if these three panels were close. It is not disputed that the corridor lights were switched on during the Attack.⁵⁵ Even though Shaffika was unable to recall if the toilet lights in the Unit were switched on or off,⁵⁶ Fauzi and the accused gave clear and consistent

⁵¹ 16 February 2021 Transcript at p 70 lines 14–21.

⁵² 16 February 2021 Transcript at p 69 lines 12–24.

⁵³ 19 February 2021 Transcript at p 10 lines 21–27 and p 41 lines 13–17; 25 February 2021 at p 45 lines 5–6; 22 March 2021 Transcript at p 11 lines 28–31.

⁵⁴ 17 February 2021 Transcript at p 56 lines 12–15; 18 February 2021 Transcript at p 6 lines 16–24.

⁵⁵ 19 February 2021 Transcript at p 19 line 26 to p 20 line 3; 22 March 2021 Transcript at p 11 lines 28–31.

⁵⁶ 19 February 2021 Transcript at p 40 lines 31–32.

evidence that there was light coming from the toilet.⁵⁷ I therefore find that there was light coming from the toilet.

32 There is, however, some uncertainty as to the *other* sources of light in the Unit at the time of the Attack:

(a) Both Fauzi and Shaffika were unable to recall whether the window panels were open or close.⁵⁸ The significance of this is that the bottom four panels of the window were made of opaque metal,⁵⁹ even though the top three panels were made of dark tinted glass.⁶⁰ The state of the evidence is such that I am unable to make a finding as to whether the window panels were open or close.

(b) Conflicting testimonies were also given as to whether the door to the Unit was open or close. According to Fauzi, the door to the Unit was close during the Attack.⁶¹ However, the accused testified that the door was open during the Attack,⁶² and light from the corridor was streaming in through the doorway into the Unit.⁶³ Shaffika during examination-in-chief claimed that the door was not close at any point

⁵⁷ 18 February 2021 Transcript at p 106 lines 10–11; 19 February 2021 Transcript at p 10 lines 17–23; 25 February 2021 Transcript at p 45 lines 5–6; 22 March 2021 Transcript at p 11 lines 28–31.

⁵⁸ 18 February 2021 Transcript at p 102 lines 20–25; 19 February 2021 Transcript at p 10 lines 13–14 and p 40 lines 27–30.

⁵⁹ 17 February 2021 Transcript at p 56 lines 6–9.

⁶⁰ 17 February 2021 Transcript at p 56 lines 12–15; 18 February 2021 Transcript at p 6 lines 16–24.

⁶¹ 18 February 2021 Transcript at p 102 lines 1–9, p 105 line 29 to p 106 line 9; 19 February 2021 Transcript at p 10 lines 11–12.

⁶² 25 February 2021 Transcript at p 46 line 6 to p 47 line 4; 22 March 2021 Transcript at p 11 lines 28–31.

⁶³ 22 March 2021 Transcript at p 12 lines 2–9.

that night,⁶⁴ but under cross-examination, Shaffika accepted that the door was “then opened” and she left the Unit first.⁶⁵ Her evidence during cross-examination thus suggests that the door was close during the Attack. The Defence claims that the door was most likely close during the Attack as blood splatters can be seen on the side of the door which faces the interior of the Unit.⁶⁶ If the door was open during the Attack, it would have improved the visibility in the Unit because the corridor lights were switched on during the Attack.⁶⁷ Due to conflicting evidence on whether the door was open or close, I cannot make a finding on this issue.

33 However, even if all the window panels and the door were close during the Attack, there would still be three sources of light in the Unit: (a) light from the television; (b) corridor light streaming in through the dark tinted glasses of the top three window panels; and (c) light from the toilet (see above at [31]).

34 The uncertainties surrounding whether the window panels and the door were open or close, also do not prevent me from being satisfied, beyond a reasonable doubt, that there was adequate lighting for the accused to see where he was stabbing, and for the deceased to see where the accused was and the movements of the accused. This can be inferred from: (a) the accused’s own testimony and statement to the police; and (b) Fauzi’s and Shaffika’s testimonies.

⁶⁴ 19 February 2021 Transcript at p 49 lines 1–11.

⁶⁵ 19 February 2021 Transcript at p 67 lines 1–11.

⁶⁶ DCS at para 40.

⁶⁷ 19 February 2021 Transcript at p 19 line 26 to p 20 line 3; 22 March 2021 Transcript at p 11 lines 28–31.

35 First, it is evident from the accused’s testimony during examination-in-chief that there was adequate light for him to see the deceased’s upper body and his movements. When asked by the court whether there was sufficient light for him to view the right shoulder of the deceased, the accused testified that he could see the deceased even though “it was a little obscure”.⁶⁸ He also claimed that while some parts of the Unit were bright, the deceased was in the “dark part” of the Unit during the Attack.⁶⁹ However, these qualifications, that his view of the deceased was “a little obscure” and the deceased was in the “dark part” of the Unit, lose much force in the light of the accused’s detailed and vivid descriptions of the deceased’s movements during examination-in-chief. The accused testified that he saw the deceased blocking his attack using his hand,⁷⁰ with one of his legs slightly raised.⁷¹ The accused even demonstrated in court that the deceased was moving his body from left to right, with his shoulders moving in a back-and-forth manner and both arms raised in a blocking movement.⁷²

36 Consistent with his testimony during examination-in-chief, the accused testified under cross-examination that the deceased had raised his arms in a blocking motion with his shoulders shaking back and forth. According to the accused, the deceased also alternated between using his left and right knees in a defensive position. The accused also claimed that he re-enacted what the deceased was doing for Dr Lee.⁷³ Significantly, the accused testified that there

⁶⁸ 25 February 2021 Transcript at p 48 lines 1–13.

⁶⁹ 25 February 2021 Transcript at p 45 lines 2–4, p 47 lines 21–26 and p 55 lines 16–19.

⁷⁰ 25 February 2021 Transcript at p 44 lines 11–13.

⁷¹ 25 February 2021 Transcript at p 49 lines 1–7 and lines 21–22.

⁷² 25 February 2021 Transcript at p 49 lines 1–18.

⁷³ 22 March 2021 Transcript at p 12 line 21 to p 13 line 29.

was sufficient light for him to see the deceased's shoulder, as well as *the deceased's entire upper body*.⁷⁴

37 In fact, even before testifying on the stand, the accused, in his statement to the police on 19 August 2017 (the "19 August Statement"), was able to state that he saw blood oozing out of the deceased's chest.⁷⁵

38 It is thus evident from the accused's own testimony and statement to the police that there was adequate light in the room for the accused to see the deceased's chest and take an aim at it.

39 Second, even though the witnesses to the incident, Fauzi and Shaffika, both testified that the Unit was dark,⁷⁶ both could still see the positions and movements of the accused and the deceased when they turned their attention to the Attack. Fauzi, for instance, testified that he was able to see the accused doing punching actions, while the deceased was leaning back and kicking upwards at the accused's leg. When he moved closer towards the deceased and the accused to stop the fight, he could see the Knife.⁷⁷ Shaffika, while she was inside the Unit, saw the accused standing near a silver fan on the floor, holding the Knife, while the deceased was sitting down on the floor.⁷⁸ After she moved to the open doorway (while still being in the Unit), she was able to see that the accused was

⁷⁴ 22 March 2021 Transcript at p 12 lines 23–25.

⁷⁵ AB at p 289 at para 8.

⁷⁶ 19 February 2021 Transcript at p 10 lines 28–30 and p 67 lines 15–21.

⁷⁷ 18 February 2021 Transcript at p 106 line 16 to p 108 line 31 and p 110 lines 18–27; 19 February 2021 Transcript at p 18 line 19 to p 19 line 3.

⁷⁸ 19 February 2021 Transcript at p 49 line 21 to p 51 line 16, p 64 line 18 to p 65 line 17, p 67 lines 25–29.

squatting beside the deceased, while the deceased was lying down.⁷⁹ All these fortify my finding that there was adequate light in the Unit for the accused to see where he was aiming.

40 It also follows, from the foregoing analysis, that there must have been sufficient light for the deceased to see where the accused was as well as the accused's movements. Crucially, the deceased must have been able to see that the accused was holding the Knife.

The accused chose the most lethal implement in the kitchen tray

41 The accused testified that he took the Knife from a black tray in the kitchen.⁸⁰ As the Prosecution rightly points out, the black tray had two other less lethal implements, a chopper and a knife with a rounded tip (the "dinner knife").⁸¹

42 When asked during cross-examination as to why he did not use the chopper or the dinner knife, the accused explained that the Knife was on top of the chopper and the dinner knife, so he did not see the chopper or the dinner knife. He only saw the Knife.⁸²

43 However, the accused's 19 August Statement indicated that he did see the chopper. In his 19 August Statement, he expressly mentioned that "[t]here were two knives in the tray – one is a chopper without handle and the other is a

⁷⁹ 19 February 2021 Transcript at p 45 line 8 to p 47 line 15, p 53 lines 15–26 and p 67 lines 30–32.

⁸⁰ 22 March 2021 Transcript at p 4 lines 8–14; P255.

⁸¹ 22 March 2021 Transcript at p 7 lines 8–23.

⁸² 22 March 2021 Transcript at p 4 lines 21–32 and p 7 lines 7–20.

normal kitchen knife”, and he “took the normal kitchen knife”.⁸³ It is also unbelievable that the accused did not see the chopper and the dinner knife. Even if the Knife was initially lying on top of the chopper and the dinner knife, the accused would have seen the chopper and the dinner knife after he removed the Knife from the tray. During cross-examination, the accused accepted that the kitchen area is next to the toilet, and he could see the black tray and the Knife because the toilet light was switched on.⁸⁴ By extension, he must have seen the chopper and the dinner knife after he removed the Knife from the tray.

44 Accordingly, I find that the accused consciously chose to take the Knife, despite being aware of the availability of less lethal implements in the black tray.

The accused had intentionally inflicted the Fatal Stab Wound

45 The evidence, on the whole, shows beyond a reasonable doubt that the Fatal Stab Wound was intentionally inflicted by the accused. There was sufficient light in the Unit for the accused to aim at the deceased’s chest while he held the Knife and made punching motions at the deceased. As described by Fauzi and the accused, there was some physical altercation between the accused and the deceased. This would have engendered some difficulty in aiming at the deceased’s chest. Notwithstanding that, the accused did aim at the deceased’s chest and intentionally thrust the Knife into his chest. This is apparent from how the Knife was forcefully pushed in almost to its hilt. The blade length of the Knife was 17cm, while the depth of the Fatal Stab Wound was between 11cm to 13cm. The degree of force required to achieve such substantial penetration through the full thickness of the bone, must have been tremendous.

⁸³ AB at p 288–289 at para 7.

⁸⁴ 22 March 2021 Transcript at p 7 lines 24–27.

46 The accused's choice of weapon further bolsters the inference that the accused had harboured the intention to inflict the Fatal Stab Wound. In this regard, the accused mentioned for the first time during cross-examination that he resorted to the Knife after failing to find a wooden pole or a metal rod.⁸⁵ When confronted with photographic evidence of the toilet, which showed that there was a black rod together with a broom and a dustpan, the accused claimed that the black rod was what he was looking for in the few seconds he went into the kitchen.⁸⁶ However, he insisted that at the material time, he did not see the black rod, or the broomstick and the dustpan, because he only did a quick, spontaneous search.⁸⁷ The Prosecution posits that these were fabrications and afterthoughts on the part of the accused.⁸⁸ On the other hand, the Defence put forward several explanations as to why the accused made this allegation late in the day.⁸⁹ It is not necessary for me to make a determination as to whether the accused had initially intended to find a wooden pole or metal rod. The fact remains that there were other less lethal implements in the black tray which would have been immediately apparent to the accused after he picked up the Knife from the black tray. Nevertheless, the accused proceeded with his choice of the most lethal weapon in the black tray, and returned to the room to attack the deceased. His choice of weapon is therefore consistent with his intention to cause the Fatal Stab Wound.

47 Going against the foregoing analysis is the Defence's claim that the accused had "accidentally poke[d]" the deceased's chest while swinging the

⁸⁵ 22 March 2021 Transcript at p 5 line 2 to p 6 line 31.

⁸⁶ 24 March 2021 Transcript at p 27 lines 2–16.

⁸⁷ 24 March 2021 Transcript at p 27 line 17 to p 29 line 9.

⁸⁸ PCS at para 33.

⁸⁹ DCS at paras 47–49 and 52.

Knife downwards because the deceased moved forward to block.⁹⁰ In an attempt to bolster the credibility of this account, the Defence argues that these took place in the course of a fast-paced and chaotic altercation within a relatively dark Unit; as a result, it was hard for the accused to discern where the Knife was “hitting”. Emphasis is also placed on the accused’s testimony that the accused and the deceased were taking turns to “bump” into each other.⁹¹

48 The Defence’s case, however, is not borne out by the evidence and is inherently incredible. At the outset, it is clear from the forensic evidence and Fauzi’s testimony that the Fatal Stab Wound was inflicted by an inward thrust. Dr Lau unequivocally testified that it was not possible for the Fatal Stab Wound to be caused by a slashing motion. Setting aside the Defence’s assertion that it was hard for the accused to ascertain where the Knife would “hit”, the crux of the Defence’s case is that the deceased had *moved towards the accused* as the accused was swinging the Knife downwards. This is plainly implausible. Given that the Fatal Stab Wound was caused by an extremely forceful, inward thrust of the Knife, the deceased would have needed to move towards the accused at great speed. It would be quite incredible for the deceased to have undertaken such a dangerous and fatal course of action, when there was adequate light for him to see that the accused was wielding the Knife.

49 The Defence draws the court’s attention to the absence of forensic reconstruction of the events leading up to the infliction of the Fatal Stab Wound.⁹² However, as the Prosecution correctly posits, the Defence bears the evidential burden of adducing expert evidence in support of its version of

⁹⁰ DCS at para 56; 24 March 2021 Transcript at p 12 lines 10–14.

⁹¹ DCS at paras 56, 58, 66 and 69; DRS at paras 32–33.

⁹² DCS at paras 22 and 57; DRS at para 31.

events.⁹³ The concept of the evidential burden was the subject of the recent Court of Appeal decision in *Public Prosecutor v GCK* [2020] 1 SLR 486 (“*GCK*”). The evidential burden is the burden to adduce sufficient evidence to raise an issue for the consideration of the trier of fact (*GCK* at [132]). The evidential burden generally lies on the Prosecution, but the evidential burden may lie on the Defence, depending on the nature of the defence and the fact in issue that is being raised (*GCK* at [133]). There will not be any question of the Prosecution having to discharge its evidential burden by calling a particular witness *if the accused person’s defence is patently and inherently incredible to begin with*: see *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [71] and *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 at [80]. Here, the Defence seeks to raise a reasonable doubt by suggesting that the Fatal Stab Wound was caused inadvertently, according to the accused’s version of events. It is thus incumbent on them to adduce sufficient evidence in support of that account. The Prosecution does not shoulder the evidential burden to adduce expert evidence, such as evidence from a forensic reconstruction expert, to rebut the accused’s version of events, given that it is inherently incredible to begin with.

50 To sum up, the Defence’s case, that the Fatal Stab Wound was accidentally inflicted by the accused while the deceased was moving towards him, is incapable of raising a reasonable doubt.

51 Next, the Defence also claims that the accused was under the influence of Nitrazepam intoxication at the time of the attack. According to the Defence,

⁹³ PRS at para 6.

this impaired the accused's cognition, volition and judgment, and affected the accused's ability to aim with intent.⁹⁴

52 In so far as the Defence is saying that the accused was incapable of forming an intention to inflict the Fatal Stab Wound as a result of Nitrazepam intoxication, this argument is a non-starter in the light of the accused's multiple testimonies as to how he took the Knife because he wanted to teach the deceased a lesson.⁹⁵ These show that his cognitive processes were not so handicapped that it was impossible for him to form an intention to inflict the Fatal Stab wound.

53 If what the Defence means is that the accused was physically incapable of aiming the Knife at the deceased's chest, this argument has slightly more merit given that the accused did testify to consuming seven Nitrazepam pills prior to the Attack.⁹⁶ However, upon considering the expert evidence on the effects of Nitrazepam on the accused, I find that the accused's physical control was diminished to some degree as a result of Nitrazepam, but that reduction in control was not at all severe (see below at [117]). Hence, I am satisfied that the accused was still physically capable of aiming the Knife at the deceased's chest.

54 For completeness, I make three final observations.

55 First, there is conflicting evidence as to whether the deceased was standing or sitting during the Attack. Fauzi testified that the deceased was sitting on the floor during the Attack.⁹⁷ The accused, however, expressly refuted Fauzi's testimony and claimed that the deceased was standing during the

⁹⁴ DCS at para 45.

⁹⁵ 22 March 2021 Transcript at p 5 lines 6–20; AB at p 293 at para 21.

⁹⁶ 26 February 2021 Transcript at p 43 line 31 to p 44 line 6.

⁹⁷ 18 February 2021 Transcript at p 110 lines 2–17.

Attack.⁹⁸ This inconsistency does not have a bearing on my analysis. Even if I accept the accused's evidence that the deceased was standing during the Attack, the unassailable forensic evidence is that the Fatal Stab Wound was caused by an inward thrust of the Knife, and this can take place regardless of whether the deceased was standing or sitting. Similarly, even if the deceased was standing during the Attack, this does not change the fact that there was sufficient lighting for the accused to aim at the deceased's chest, and it is still highly improbable for the deceased to have accidentally impaled himself as he moved towards the accused. In short, nothing turns on whether the deceased was sitting or standing.

56 Second, I observe that the Prosecution and the Defence have made several points which are at best neutral factors. They do not show that the accused had the intention to inflict the Fatal Stab Wound:

(a) The Prosecution relies on the presence of two other stab wounds to show that the Fatal Stab Wound was not inflicted by an errant stab, but rather in the course of a series of stabs directed at the deceased.⁹⁹ Reference is made to Dr Lau's evidence that these two other stab wounds were likely to have been inflicted as the deceased attempted to defend himself.¹⁰⁰ I disagree. Regardless of whether the two other stab wounds were defensive in nature, their existence does not assist in showing that the Fatal Stab Wound was intentionally or accidentally inflicted in the manner described by the accused. It is a neutral factor.

⁹⁸ 25 February 2021 Transcript at p 49 line 23 to p 50 line 18.

⁹⁹ PCS at para 29.

¹⁰⁰ PCS at para 29.

(b) The Prosecution contends that the accused effectively admitted that he had intended to inflict the Fatal Stab Wound. For this contention, the Prosecution relies on the following:¹⁰¹

(i) In the accused’s 19 August Statement, the accused claimed that he had taken the Knife from the kitchen to “hurt [the deceased]”,¹⁰² and had swung the Knife at the deceased’s upper body.¹⁰³ The accused subsequently saw blood oozing out of the deceased’s chest.¹⁰⁴

(ii) In the accused’s statement recorded on 22 August 2017 (the “22 August Statement”), the accused stated that he took the Knife to “injure [the deceased] to teach [the deceased] a lesson”.¹⁰⁵

(iii) The accused told Dr Kandasami and Dr Lee that he had wanted to teach the deceased a lesson.¹⁰⁶ He also told Dr Kandasami that he had slashed the deceased on the chest and shoulder,¹⁰⁷ and that the deceased was “better dead”.¹⁰⁸

(iv) At trial, the accused explained that the Fatal Stab Wound occurred by accident. When the accused “tried to cut [the deceased’s] shoulder or slash his shoulder, [the accused] came

¹⁰¹ PCS at para 36.

¹⁰² AB at p 289 at para 7.

¹⁰³ AB at p 289 at para 8.

¹⁰⁴ AB at p 289 at para 8.

¹⁰⁵ AB at p 293 at para 21.

¹⁰⁶ AB at p 172 at para 19; AB at p 332 at para 27.

¹⁰⁷ AB at p 172 at para 19.

¹⁰⁸ AB at p 172 at para 20.

and [the deceased] came”, and he “accidentally poke in that area” in “the midst of [the deceased] trying to block”.¹⁰⁹

According to the Prosecution, these collectively amounted to an admission that he had inflicted the Fatal Stab Wound intentionally.¹¹⁰ I disagree. Rather, I agree with the Defence that some of these allegations and statements merely contain a description of the accused’s version of events, and in so far as some of these allegations reveal the accused’s intention, they only amount to an admission to cause injury to the deceased as opposed to an admission that *the* Fatal Stab Wound was inflicted intentionally.¹¹¹ These statements and allegations are therefore neutral factors in my assessment of whether the accused deliberately inflicted the Fatal Stab Wound.

(c) The Prosecution and the Defence both rely on the Multimedia Messaging Service message (“MMS”) which the accused drafted to the deceased shortly after the murder, wherein he expressed his desire to “whack [the deceased] real hard until he is admitted to the hospital” if the deceased called the police or the Central Narcotics Bureau (“CNB”).¹¹² In my view, this MMS is merely a neutral factor. It signifies the accused’s animosity towards the deceased, and his intention to cause further hurt to the deceased if the deceased made a report to the authorities, but it is not probative of whether the accused had earlier stabbed the deceased with the intention of causing the Fatal Stab Wound.

¹⁰⁹ 24 March 2021 at p 12 lines 10–14.

¹¹⁰ PCS at para 36.

¹¹¹ DRS at paras 19–20, 22 and 26–27.

¹¹² PCS at para 37; DRS at para 29; P375 and P376; 22 March 2021 Transcript at p 20 lines 21–27.

The fact that the accused drafted the MMS to the deceased indicates that he was under the impression that the deceased was still alive. After all, the last he had seen the deceased, the deceased was still alive. It was possible for the accused to be under such an impression regardless of whether he inflicted the Fatal Stab Wound inadvertently or intentionally.

(d) The Prosecution relies on the following message sent by the accused to one Tamamullah bin Harun (“Tamamullah”) at 10.06am on 16 August 2017:¹¹³

Remember [Tamamullah] when people talk to you, tell them that [the deceased] was the one who poked me first. [Tamamullah], now I just want to cut his hand only. Okay, do not forget.

The accused admitted on the stand that he sent this message to Tamamullah to get Tamamullah to lie on his behalf if he was questioned by the police.¹¹⁴ According to the Prosecution, this message shows that the accused’s claim in court that he was aiming for the deceased’s shoulder was an afterthought.¹¹⁵ I am unable to draw such an inference. As the accused was aware that he had caused some injury to the deceased during the Attack, it was plausible for the accused to send this message in an attempt to diminish his culpability even if it was true that he aimed at the deceased’s shoulder but inadvertently stabbed the deceased in the manner described above at [19]. That said, this message does not lend any credibility to the accused’s account of events. The accused had admitted that the contents of this message are a lie and, as a result,

¹¹³ P378 at SN 4; 22 March 2021 Transcript at p 42 lines 23–29.

¹¹⁴ 24 March 2021 Transcript at p 19 lines 4–10.

¹¹⁵ PCS at paras 42–43.

neither the existence of the message or its contents assists in showing whether the Attack transpired in the way the accused said it did.

57 The last observation is this. The Prosecution and the Defence disagree on the expertise of Dr Lau to determine whether the injuries were accidentally or deliberately inflicted.¹¹⁶ I make two points. First, I accept Dr Lau's explanation during cross-examination that he "*is entitled* to give his opinion as to whether certain injuries might have been self-inflicted or inflicted deliberately by---or through the agency of another person" [emphasis added]. In other words, Dr Lau is saying that he has the freedom to render his opinion on this issue in response to cross-examination questions. This is, however, different from saying that he has the *expertise* to give evidence as to how the injuries were inflicted. Second, as the Defence has alluded to,¹¹⁷ it is the court, and not Dr Lau, which will ultimately determine whether the Fatal Stab Wound was inflicted intentionally in light of the surrounding circumstances. The nature of the injury, which Dr Lau has the expertise to testify on, is just one factor which the court can consider when drawing an inference as to the accused's state of mind at the material time.

58 The foregoing issues nevertheless do not affect my finding that the Prosecution has shown, beyond a reasonable doubt, that the Fatal Stab Wound was intentionally inflicted by the accused. I now turn to consider whether the accused is entitled to invoke the defence of grave and sudden provocation.

¹¹⁶ PRS at para 5; DCS at para 64.

¹¹⁷ DCS at para 63.

Whether the defence of grave and sudden provocation is established on a balance of probabilities

Applicable legal principles

59 The Defence bears the burden of establishing the partial defence of grave and sudden provocation on a balance of probabilities (see *Public Prosecutor v Astro bin Jakaria* [2010] 3 SLR 862 (“*Astro bin Jakaria*”) at [139]). This partial defence is contained in Exception 1 to s 300 of the Penal Code:

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

The Court of Appeal in *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR 453 (“*Pathip Selvan*”) at [34] held that two distinct requirements must be fulfilled before the accused can invoke this defence:

- (a) the accused was deprived of self-control by the provocation (the “Subjective Test”); and
- (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 as to lose self-control (the “Objective Test”).

Defence’s case

60 The Defence’s case is that the accused lost self-control when the deceased uttered vulgarities insulting the accused’s mother, just before the

Attack.¹¹⁸ The Defence also alleged that the following matters formed the accused's mental background at the time of the offence.¹¹⁹

- (a) an altercation between the accused and the deceased (the "Alleged First Altercation") which took place around 3.00am on 16 August 2017; and
- (b) the deceased's aggressive behaviour towards the accused as well as the deceased's act of cursing at the accused in front of their friends, during the argument immediately preceding the Attack.

61 I will first consider whether there is sufficient evidence to establish (a) the Alleged First Altercation; and (b) the argument immediately preceding the Attack and insults involving the accused's mother, before proceeding to consider whether the Subjective Test and the Objective Test are fulfilled.

The Alleged First Altercation

62 The Defence's case is that the Alleged First Altercation took place before the Attack, at around 3.00am on 16 August 2017.¹²⁰ During the Alleged First Altercation, the deceased kicked and pushed the accused on the chest. This caused the accused to fall near the television console and hurt his back.¹²¹

63 In support of its case, the Defence relies on the accused's reports of feeling a pain in his back to police officers and medical personnel shortly after

¹¹⁸ DCS at paras 86–89.

¹¹⁹ DCS at paras 91–93 and 96; DRS at para 42.

¹²⁰ DCS at para 91.

¹²¹ DCS at para 28.

he was taken into custody.¹²² Reliance is also placed on medical evidence that the accused suffered from spondylolisthesis and his subsequent surgical intervention at Changi General Hospital after a fall he sustained while in remand.¹²³

64 The Prosecution submits that the Alleged First Altercation never took place. The accused gave inconsistent evidence on when and how the deceased had assaulted him,¹²⁴ and was inconsistent in the presentation of his injuries to both doctors.¹²⁵ The Alleged First Altercation is at odds with the testimony of the other witnesses, and uncorroborated by objective evidence in the form of medical reports, police camera (“Polcam”) footage, and photographs.¹²⁶ In particular, there was Polcam footage of how the accused was walking upright and purposefully towards the multi-storey carpark while carrying his belongings shortly after the Attack. Moreover, the accused could continue to sell his “power pills” to a customer at the void deck where he was subsequently arrested. He raised no complaint or sign of pain while he was escorted by two police officers to Police Cantonment Complex, and was able to stand upright unassisted at the Police Cantonment Complex.¹²⁷ As for the fact that the accused underwent a back operation due to the medical condition of spondylolisthesis, the Prosecution submits that this is at best equivocal in supporting the accused’s claim that he was assaulted by the deceased.¹²⁸

¹²² DCS at paras 29–30.

¹²³ DCS at para 31.

¹²⁴ PCS at para 52.

¹²⁵ PCS at paras 64–66.

¹²⁶ PCS at para 52.

¹²⁷ PCS at paras 62–63.

¹²⁸ PCS at paras 60 and 67–69.

65 It is undisputed that there were no witnesses to the Alleged First Altercation.¹²⁹ Consequently, the issue is whether the accused's testimony relating to the occurrence of the Alleged First Altercation ought to be accepted. As the Prosecution points out,¹³⁰ there are numerous difficulties with the accused's testimony relating to the Alleged First Altercation. I am therefore not satisfied, on a balance of probabilities, that the Alleged First Altercation did take place.

66 The most glaring issue with the accused's testimony is his severe lack of conviction as to whether the Alleged First Altercation did happen. The accused conceded under cross-examination that the alleged kick and push by the deceased, and him falling on the television console, *might* have been an illusion. He claimed that when Fauzi talked about having illusions, he realised that the Alleged First Altercation could have been an illusion.¹³¹ He supplemented this in re-examination by explaining that he doubted his memory of what happened due to his consumption of Nitrazepam pills.¹³²

67 At another portion of his testimony during re-examination, the accused put forward his account of what transpired during the Alleged First Altercation, and in the same breath, conveyed his own doubts as to the veracity of this version of events:¹³³

Q Mr Rosli, I think we all understand the gravity of the situation. *So the question I have is that your narrative about Mr Roslan knocking you down, do you believe that or not?*

¹²⁹ DCS at para 29; 18 February 2021 Transcript at p 60 lines 6–10.

¹³⁰ PCS at paras 51–69.

¹³¹ 26 February 2021 Transcript at p 41 line 17 to p 42 line 16.

¹³² 23 March 2021 Transcript at p 9 lines 12–22.

¹³³ 24 March 2021 Transcript at p 20 line 21 to p 21 line 4.

A *I think no. When I recall back, no, I did not fall down. But I felt the kicking and the pushing at--during the altercation. Maybe that's what I meant about what had happened before that, the kicking. In all honesty, I am of sound mind but **I'm not confident.** I'm not normal. **I'm afraid that my narrative might be wrong. I cannot ascertain that it's accurate.** I can explain what happened, but I apologise if it's not accurate, whatever that I have shared.*

[emphasis added]

68 The doubts that the accused harbours for his own evidence are significant: no one witnessed the Alleged First Altercation, and therefore, the accused is the only one who could testify on the Alleged First Altercation.

69 To the accused's credit, he consistently mentioned his back injury to the doctors and the police shortly after his arrest. There were also photographs depicting slight red marks just slightly above the accused's buttock.¹³⁴ These photographs were taken by Inspector Shaiful Ali Abdul Rahim ("Inspector Shaiful") on 16 August 2017 when the accused said that he had back pain. The next day, on 17 August 2017 at 11.10am, Dr Kang Jun Hui Larry ("Dr Kang") performed a medical examination on the accused and recorded that there was "midline tenderness" over the accused's coccygeal region.¹³⁵ On the stand, Dr Kang explained that the coccygeal region refers to the tailbone, which is located just above the buttocks. He also explained that tenderness means that pain was observed when he used his fingers to compress that area.¹³⁶ Dr Kang also noted that the accused was unable to stand straight from the pain during the course of the examination.¹³⁷ Subsequently, during the accused's medical

¹³⁴ 23 February 2021 Transcript at p 27 lines 12–18; P370; P212.

¹³⁵ AB 179.

¹³⁶ 24 February 2021 Transcript at p 4 line 21 to p 5 line 4.

¹³⁷ 24 February 2021 Transcript at p 6 lines 12–20.

examination with Dr Lin Weicong Kenneth (“Dr Lin”) at Changi General Hospital on 17 August 2017 at 3.47pm, Dr Lin observed that the accused was able to stand straight during the examination,¹³⁸ but there was “[m]ild tenderness” “over the area to the left of the coccyx”. Dr Lin explained on the stand that this means that the accused mentioned that he experienced a little bit of pain when he performed the examination.¹³⁹

70 I am prepared to accept that the accused had sustained a back injury some time before he was arrested. Nevertheless, the question remains as to whether it was the deceased who had inflicted that back injury. In this regard, it is troubling that the accused was unable to provide a consistent account of what happened during the Alleged First Altercation. There were at least two accounts of how the back injury was sustained.

71 The first version is that the deceased had kicked the accused’s lower back. As mentioned, the accused informed Inspector Shaiful on 16 August 2017 that he had back pain because he was kicked. He did not mention any other injuries.¹⁴⁰ Neither did he say who kicked him.¹⁴¹ On 17 August 2017 at 11.10am, during the accused’s medical examination with Dr Kang, the accused told Dr Kang that he was “kicked in the right lower chest”, and also “complained of lower back pain after being kicked” the day before,¹⁴² but he did not tell Dr Kang who had kicked him.¹⁴³ In the accused’s cautioned statement dated 17 August 2017 (the “17 August Cautioned Statement”), which was taken

¹³⁸ 24 February 2021 Transcript at p 14 lines 4–5.

¹³⁹ 24 February 2021 Transcript at p 15 lines 3–17; AB 183.

¹⁴⁰ 23 February 2021 Transcript at p 27 lines 30–31.

¹⁴¹ 23 February 2021 Transcript at p 26 lines 1–6.

¹⁴² AB at p 179.

¹⁴³ 24 February 2021 Transcript at p 3 line 11 to p 4 line 5.

at about 1.20pm, the accused claimed that the deceased had kicked his “back part, lower back of [his] body causing the backbone to misalign”.¹⁴⁴ No mention was made as to whether the deceased kicked or punched any other parts of the accused’s body. Subsequently, during the accused’s medical examination with Dr Lin at 3.47pm on 17 August 2017, the accused told Dr Lin that he was kicked on the lower back the previous day. Again, he did not say who kicked him.¹⁴⁵

72 The second version is as follows. In the accused’s 19 August Statement, which was taken three days after the Alleged First Altercation, the accused claimed that the deceased had “kicked and pushed [him] on [his] chest”, and he “fell near the TV console”. He also said that he sustained some cuts on his right palm and left leg. His lower back was also injured.¹⁴⁶ At trial, the accused accepted that this contained an accurate description of the Alleged First Altercation,¹⁴⁷ but went on to elaborate that the deceased pushed his chest with one hand, before kicking him in the abdomen, causing his back to hit the television console.¹⁴⁸ There is a slight difference in the accused’s oral testimony in so far as he claimed that his body hit the television console, whereas he previously claimed that he “fell near the TV console” in his 19 August Statement. Nevertheless, I do not find this difference material. I accept that the accused’s oral testimony was, to a large extent, a further exposition of what he had previously stated in his 19 August Statement.

¹⁴⁴ AB at p 316.

¹⁴⁵ 24 February 2021 Transcript at p 13 lines 5–15.

¹⁴⁶ AB at 287 at para 2.

¹⁴⁷ 26 February 2021 Transcript at p 30 line 31 to p 31 line 16.

¹⁴⁸ 26 February 2021 Transcript at p 32 lines 10–32 and p 33 lines 18–19.

73 As reiterated above, the accused was the only person who could testify to the occurrence of the Alleged First Altercation. Yet, the accused was unable to present a consistent narrative as to how the deceased inflicted the back injury. The variability with which the accused described the Alleged First Altercation, seen alongside the accused's lack of conviction that the Alleged First Altercation ever occurred, goes to show that the Alleged First Altercation did not happen.

74 The Defence submits that there were gaps and inconsistencies in the accused's account of how he was assaulted by the deceased because he has poor comprehension and an unreliable memory. These were compounded by his Nitrazepam intoxication.¹⁴⁹

75 I reject this explanation. Each version of the event put forward by the accused first emerged within three days from the time the Alleged First Altercation took place. If, as the Defence's case puts it, the Alleged First Altercation formed part of the accused's mental background when he stabbed the deceased, it must have been significant enough for the accused to still recall how his back injury was caused by the deceased in the few days following the Alleged First Altercation. Dr Kandasami testified that high doses of Nitrazepam can cause anterograde amnesia and patchy memory.¹⁵⁰ But as elaborated further below at [117], the accused was not under severe Nitrazepam intoxication. Furthermore, evidence of the accused's patchy memories only relate to events which took place *after* the Attack (see below at [110(c)] and [115]), whereas the Alleged First Altercation supposedly took place *before* the Attack. That the

¹⁴⁹ DCS at para 32; DRS at para 41.

¹⁵⁰ 24 February 2021 Transcript at p 89 lines 11–20.

accused has poor comprehension also does not explain why the accused gave two inconsistent accounts as to how he had sustained the back injury.

76 There is one further difficulty with the accused's account of events. The accused initially testified that the Alleged First Altercation took place between 1.00am to 2.00am on 16 August 2017, before claiming that it took place around 3.00am on the same day.¹⁵¹ However, from 1.00am to 3.00am on 16 August 2017, at least one of these three persons, Tamamullah, Shaffika and Fauzi, was at the Unit. None of them witnessed the Alleged First Altercation taking place.

(a) Tamamullah, who arrived at the Unit before 7.00pm on 15 August 2017 and left the Unit 2.49am on 16 August 2017,¹⁵² testified that there was no argument or fight.¹⁵³

(b) As for Fauzi and Shaffika, their evidence is as follows:

(i) Both testified that around 1.13am, they brought Shaffika's cat to the Unit.¹⁵⁴

(ii) Shaffika testified that she had left the Unit with the accused at about 1.52am to buy tidbits.¹⁵⁵ At approximately 1.56am, Shaffika, the accused and the deceased took the lift up

¹⁵¹ 25 February 2021 Transcript at p 34 lines 26–32 and p 35 lines 16–19; 26 February 2021 Transcript at p 31 line 31 to p 32 line 9.

¹⁵² 18 February 2021 Transcript at p 34 line 15 to p 35 line 32, p 54 line 12 to p 55 lines 10–27, p 57 lines 8–14 and p 60 lines 19–25; P369, photograph 21.

¹⁵³ 18 February 2021 Transcript at p 44 lines 12–17.

¹⁵⁴ 18 February 2021 Transcript at p 95 lines 1–32; 19 February 2021 Transcript at p 32 line 9 to p 33 line 7.

¹⁵⁵ 19 February 2021 Transcript at p 34 lines 17–26.

from the ground floor of the block.¹⁵⁶ Thereafter, Shaffika claimed that she went to Siti Nor Suria binte Yacob’s (“Suria”) unit, while the deceased and the accused went back to the Unit. Suria is Fauzi’s sister. Shaffika claimed that Fauzi was with her at Suria’s house.¹⁵⁷ On the other hand, Fauzi did not testify that he went to Suria’s house. It appears, from his testimony, that he was at the Unit watching movies on the television until 2.20am.¹⁵⁸

(iii) Both Fauzi and Shaffika testified that at 2.20am, they took the lift down with the cat, to place the cat back at Shaffika’s place, before returning to the Unit at approximately 2.26am.¹⁵⁹ They remained in the Unit until the Attack took place. They testified that the accused and the deceased had quarrelled shortly before the Attack,¹⁶⁰ but did not mention that the deceased had assaulted the accused prior to the Attack.

This discrepancy in the testimonies of Shaffika and Fauzi at [76(b)(ii)] above are not material. It is still patently clear, from the testimonies of Tamamullah, Shaffika and Fauzi, that at least one of them was in the Unit between 1.00am to 3.00am on 16 August 2017, and none of them witnessed the Alleged First Altercation. In the same vein, the accused’s claim that “[t]here was nobody” when the Alleged First Altercation took place sits at odds with the fact that the

¹⁵⁶ 19 February 2021 Transcript at p 35 lines 2–32; P369, photograph 14.

¹⁵⁷ 19 February 2021 Transcript at p 36 line 21 to p 37 line 10.

¹⁵⁸ 18 February 2021 Transcript at p 97 line 7 to p 98 line 13.

¹⁵⁹ 18 February 2021 Transcript at p 98 lines 1–24; 19 February 2021 Transcript at p 37 line 22 to p 38 line 4.

¹⁶⁰ 18 February 2021 Transcript at p 102 line 29 to p 105 line 5 and p 107 lines 2–5; 19 February 2021 Transcript at p 41 lines 1–5 and p 43 line 29 to p 44 line 2.

Alleged First Altercation took place at a time when there must have at least been one other person in the Unit.

77 In this regard, the accused claimed that even if there was someone in the Unit at the time of the Alleged First Altercation, that person “might have been [Tamamullah], who was in the toilet”.¹⁶¹ In addition, the Defence relies on Tamamullah’s testimony that he was focusing on playing his guitar while he was inside the Unit.¹⁶²

78 I note that Tamamullah would have been the only other person present in the Unit if Shaffika’s account of events, that Fauzi and her were at Suria’s house from 1.56am to 2.20am, is to be accepted. However, even if Tamamullah was the only other person in the Unit and was in the toilet or playing his guitar, he would have heard the ruckus when the Alleged First Altercation broke out. On the accused’s account of the Alleged First Altercation, he had quarrelled with the deceased shortly before and after the Alleged First Altercation.¹⁶³ The accused even alleged that the deceased was “shouting” at the accused during this quarrel.¹⁶⁴ If the accused’s account of events was true, this commotion would have caught Tamamullah’s attention. After all, Tamamullah was not completely detached from his surroundings when he played his guitar: while he did not know what the accused and the deceased were conversing about, he claimed that the accused and the deceased could be heard “on and off”.¹⁶⁵ Yet, Tamamullah readily testified that there was no argument or fight.¹⁶⁶

¹⁶¹ 25 February 2021 Transcript at p 35 lines 16–24.

¹⁶² DRS at para 49; 18 February 2021 Transcript at p 59 lines 24–26.

¹⁶³ AB at p 287 at para 2; 26 February 2021 Transcript at p 34 line 17 to p 36 line 14.

¹⁶⁴ 26 February 2021 Transcript at p 35 line 29 to p 36 line 3.

¹⁶⁵ 18 February 2021 Transcript at p 59 line 27 to p 60 line 5.

¹⁶⁶ 18 February 2021 Transcript at p 44 lines 12–17.

79 The Defence also points to Tamamullah’s testimony that he chatted with Fauzi at a bench right outside the Unit for two hours, leaving the accused and the deceased in the Unit alone.¹⁶⁷ This is indeed what Tamamullah has testified.¹⁶⁸ However, this two-hour period was in the evening of 15 August 2017, when Tamamullah arrived at the Unit.¹⁶⁹ It did not take place between 1.00am to 3.00am on 16 August 2017. An additional difficulty is that Fauzi did not testify that he had a two-hour chat with Tamamullah on the bench outside the Unit in the evening of 15 August 2017. Fauzi’s version of events is that “at sunset time” on 15 August 2017, he passed by the Unit and saw Tamamullah, the accused and the deceased sitting in the Unit. The door to the Unit was open and the deceased was sitting at the doorway. He exchanged pleasantries with the deceased before walking to Suria’s unit.¹⁷⁰ Even if I disregard Fauzi’s testimony and accept that Tamamullah chatted with Fauzi for two hours in the evening of 15 August 2017, the fact remains that this two-hour timeframe did not coincide with when the accused claimed the Alleged First Altercation took place (*ie*, 1am to 3am on 16 August 2017).

80 For the foregoing reasons, the Defence has not proven, on a balance of probabilities, that the Alleged First Altercation took place.

The deceased’s aggressive behaviour, argument between the accused and the deceased, as well as insults involving the accused’s mother

81 I accept that the deceased had behaved aggressively towards the accused, shortly before the Attack took place. The accused testified that while

¹⁶⁷ DRS at paras 45 and 48.

¹⁶⁸ 18 February 2021 Transcript at p 35 line 29 to p 36 line 16, p 59 lines 9–23 and p 60 lines 28–30.

¹⁶⁹ 18 February 2021 Transcript at p 35 line 23 to p 37 line 24.

¹⁷⁰ 18 February 2021 Transcript at p 92 line 7 to p 93 line 20.

he was sitting beside Fauzi, the deceased was standing and aggressively asking the accused to pay the rental fee.¹⁷¹ This is corroborated by Fauzi's evidence. Fauzi testified that while they were watching television, the deceased stood before the accused, bent forward, and repeatedly pestered the accused for money with his hands in front of the accused's face.¹⁷²

82 According to the accused, he told the deceased that the latter was trying to cheat him as he had already paid his share of the rental fee. The deceased then started to curse the accused and his mother, and a quarrel ensued.¹⁷³ I find that there was indeed a quarrel which took place between the accused and the deceased in the lead up to the Attack. The accused's evidence in this regard is corroborated by both Fauzi and Shaffika.¹⁷⁴ Shaffika, in particular, explained that she knew that the accused and the deceased were quarrelling due to their voice and tone.¹⁷⁵

83 However, Fauzi and Shaffika could not testify as to whether the deceased hurled vulgarities at the accused or insulted the accused's mother. Although Fauzi and Shaffika heard the accused and the deceased arguing, they were focusing on the movie playing on the television and did not pay attention to what the accused and the deceased were saying.¹⁷⁶ They only heard snippets of the argument. For instance, Shaffika only heard the accused say, "Are you

¹⁷¹ 25 February 2021 Transcript at p 40 lines 4–9.

¹⁷² 18 February 2021 Transcript at p 98 line 24 to p 100 line 12, p 102 line 29 to p 103 line 31; 19 February 2021 Transcript at p 16 line 29 to p 17 line 11.

¹⁷³ AB at p 288 at para 6.

¹⁷⁴ 18 February 2021 Transcript at p 104 lines 10–31 and p 122 line 23 to p 123 line 1; 19 February 2021 Transcript at p 6 lines 11–23, p 8 lines 18–20, p 41 lines 1–22 and p 43 lines 14–27.

¹⁷⁵ 19 February 2021 Transcript at p 41 lines 18–22.

¹⁷⁶ 19 February 2021 Transcript at p 6 lines 2–8 and p 41 lines 8–22.

challenging me?” to the deceased in Malay,¹⁷⁷ but did not hear what prompted this response from the accused.¹⁷⁸ As a result, the accused’s account of how the deceased directed vulgarities at him and insulted his mother is uncorroborated by an independent witness.

84 Nevertheless, on the basis of the evidence of the accused, I am prepared to accept that the deceased did utter the following vulgarities, insults and threats:

- (a) the deceased verbally threatened to “go [to Rohazlin’s] house to revenge by hitting her”;¹⁷⁹
- (b) the deceased called the accused a “bloody bastard”;¹⁸⁰
- (c) the deceased threatened to call the CNB on the accused;¹⁸¹
- (d) the deceased repeatedly and verbally threatened to hurt the accused if he did not pay his (the accused’s) share of the rental fee;¹⁸²
- (e) the deceased said, “Your mother’s cunt, you don’t try to interfere my matters with [Rohazlin]”, twice;¹⁸³
- (f) the deceased verbally threatened to hurt the accused if he interfered with the deceased’s matters with Rohazlin;¹⁸⁴

¹⁷⁷ 19 February 2021 Transcript at p 43 lines 14–27.

¹⁷⁸ 19 February 2021 Transcript at p 64 lines 1–14.

¹⁷⁹ AB at p 287 at para 2.

¹⁸⁰ AB at p 287 at para 2; 26 February 2021 Transcript at p 34 lines 17–20.

¹⁸¹ 26 February 2021 Transcript at p 33 lines 1–4.

¹⁸² AB at p 288 at para 6; 25 February 2021 Transcript at p 41 lines 4–16.

¹⁸³ AB at p 288 at para 6.

¹⁸⁴ AB at p 288 at para 6.

- (g) the deceased said the Malay phrase “kepala butuh”, which means “dickhead” in English;¹⁸⁵ and
- (h) the deceased told the accused “you talk a lot[,] [y]ou just say only”.¹⁸⁶

In the foregoing list, I have also included utterances which the accused claimed were made shortly before or after the Alleged First Altercation.¹⁸⁷ Although I did not find that the Alleged First Altercation took place, I am prepared to accept that the deceased made those utterances at some point in time before the Attack.

85 In a bid to undermine the accused’s credibility on this issue, the Prosecution points out differences in the accused’s accounts of what these vulgarities were. However, these differences do not constitute inconsistencies. When the accused’s statements to the police and his testimony on the stand are understood as a whole, it is clear that the accused was merely giving examples of the vulgarities that were hurled at him in the lead up to the Attack.¹⁸⁸

86 The Prosecution also argues that the accused gave different accounts on when the alleged conversation with the deceased took place before he stabbed the deceased. The inconsistency which the Prosecution highlights relates to the issue of whether the accused exchanged words with the deceased in the time between retrieving the Knife from the kitchen and attacking the deceased.¹⁸⁹ This is not a material inconsistency. It is clear from both Fauzi’s and Shaffika’s

¹⁸⁵ 26 February 2021 Transcript at p 46 lines 10–30.

¹⁸⁶ 26 February 2021 Transcript at p 46 lines 10–25; 23 March 2021 Transcript at p 14 lines 4–5.

¹⁸⁷ AB at p 287 at para 2.

¹⁸⁸ See in particular 24 March 2021 Transcript at p 24 lines 1–5.

¹⁸⁹ PCS at paras 34 and 71.

testimony that the accused and the deceased were quarrelling before the accused attacked the deceased, and it does not matter whether the quarrelling continued in the short space of time between retrieving the Knife from the kitchen and attacking the deceased.

Whether the Subjective Test is fulfilled

87 The Prosecution has five arguments in support of its submission that the accused did not lose self-control. First, there is nothing to suggest that the accused launched a haphazard frenzied attack on the deceased. In fact, Dr Lau characterised the Fatal Stab Wound as a “well-aimed stab wound”. Second, the accused clearly retained full awareness of the situation: he could recount how he attacked the deceased, the deceased’s reaction during the assault, as well as the time taken for significant events.¹⁹⁰ Third, the accused’s post-killing conduct shows that he did not lose self-control at the time of the offence. Fourth, the Prosecution points to Fauzi’s testimony that the accused remained “relaxed” despite the deceased “towering” over the accused while pestering him for money.¹⁹¹ Finally, the Prosecution contends that the effect of Nitrazepam on the accused was at best minimal. In this regard, the Prosecution has urged the court to prefer Dr Kandasami’s evidence to Dr Lee’s evidence.¹⁹²

88 On the other hand, the Defence places emphasis on the accused’s testimony of how he was overcome with emotions when he heard the deceased insulting his mother.¹⁹³ Reliance is also placed on the psychiatrists’ findings relating to Nitrazepam intoxication, sleep deprivation and anti-social

¹⁹⁰ PCS at para 78.

¹⁹¹ PRS at para 17.

¹⁹² PCS at para 81.

¹⁹³ DCS at paras, 83–85, 87 and 89.

personality traits,¹⁹⁴ as well as the fact that Shaffika and Fauzi witnessed the deceased insulting the accused.¹⁹⁵

How the Subjective Test is to be applied

89 Regarding the Subjective Test, the question that arises in the present case is whether the accused, at the time he inflicted the injury, had experienced a sudden and temporary loss of self-control as a result of the provocation, which made him no longer a “master of his mind” (*Pathip Selvan* at [35] and [38], citing *R v Duffy* [1949] 1 All ER 932 at 932). It is not necessary for the accused’s mind to be completely blank, or for there to be automatism when the deceased was stabbed; the accused could be aware of what was happening during the killing, and still establish that he had lost self-control (*Pathip Selvan* at [39]).

90 To determine whether the accused was no longer a “master of his mind”, a close examination of the accused’s mental state during the killing is necessary to determine why and whether he had lost self-control (*Pathip Selvan* at [38]). Regard can be had to the emotional state of the accused at the time of the stabbing, the relationship the accused had with the deceased and the way in which the injury was inflicted (see *Pathip Selvan* at [40]–[41]; *Public Prosecutor v Sundarti Supriyanto* [2004] 4 SLR(R) 622 (“*Sundarti Supriyanto*”) at [151]). The fact that the accused was intoxicated at the time of the offence is also a relevant factor for the purposes of the Subjective Test (*Astro bin Jakaria* at [119]).

91 Whether post-killing conduct can be taken into account depends on the facts of each case. The conduct of different individuals after they recover their

¹⁹⁴ DCS at paras 82 and 90.

¹⁹⁵ DCS at para 88.

composure, partially or completely, after momentarily losing it can vary infinitely and is contingent upon the existence of incalculable imponderables (*Pathip Selvan* at [42]; *Sundarti Supriyanto* at [153]–[154]).

Application to the facts

(1) How the Fatal Stab Wound was inflicted

92 A person can act in a multitude of ways when he or she loses self-control. Inflicting entirely random and haphazard injuries all over the deceased's body, as the accused in *Pathip Selvan* did (at [38] and [41]), is just one of the many ways a person can behave after losing self-control. Accordingly, the fact that the accused did not launch into a haphazard frenzied attack on the deceased has little probative value to the inquiry of whether the accused did in fact lose self-control.

93 It is more helpful to examine the specific injury that was caused and how it was caused. On the present facts, the accused thrust the Knife forcefully into the deceased's chest. The force was so great that the Knife penetrated the full thickness of the sternum and perforated the anterior wall of the right ventricle of his heart. The tremendous force exerted by the accused in stabbing the deceased is a strong indication of an enraged attack, and is consistent with the Defence's case that the accused had lost self-control.

(2) The accused's awareness of the situation at the time of the offence

94 I accept the Prosecution's argument that the accused is able to recount the incident down to the seconds: the accused could recall the time taken for him to walk from the kitchen to the living room, the duration of the Attack on the deceased, and the time taken for the deceased to run out of the Unit.

95 However, as the Defence rightly points out,¹⁹⁶ an accused's ability to remember what he or she did does not preclude the court from finding that the accused did in fact lose self-control. The accused can be aware of what was happening during the killing, and still satisfy the Subjective Test (*Pathip Selvan* at [39]). Hence, I place little weight on the accused's level of awareness in my assessment of whether he had lost self-control.

(3) The accused's post-killing conduct

96 Emphasis is placed by the Prosecution on the accused's post-killing conduct.¹⁹⁷ I accept that the accused retained the presence of mind to pack his belongings, clean up the Unit and the Knife after stabbing the deceased,¹⁹⁸ compose an MMS to intimidate the deceased,¹⁹⁹ and attempted to coach Tamamullah to lie on his behalf.²⁰⁰ However, these do not necessarily show that the accused did not lose self-control at the time of the Attack. As the Defence argues,²⁰¹ it is plausible for the accused to have regained his composure after the Attack. A general submission that the accused's presence of mind post-killing meant that he was not deprived of self-control at the material time is not convincing.

¹⁹⁶ DRS at para 59.

¹⁹⁷ PCS at paras 79–80.

¹⁹⁸ 22 March 2021 Transcript at p 19 lines 6–16.

¹⁹⁹ P 375; 22 March 2021 Transcript at p 20 line 4 to p 22 line 11.

²⁰⁰ 22 March 2021 Transcript at p 39 line 10 to p 43 line 27.

²⁰¹ DRS at para 60.

(4) The accused’s composure when the deceased pestered him for money

97 Fauzi testified that the accused appeared relaxed and was not aggressive when the deceased pestered him to pay his share of the rental fee.²⁰² However, this does not support the inference that the accused was not deprived of self-control during the Attack. Between the time when the deceased pestered the accused to pay his share of the rental fee and the time of the Attack, the accused and the deceased continued to argue.²⁰³ During this period of time, more vulgarities were probably hurled at the accused, which would have added to the rage building up within him.

(5) The accused’s anti-social personality traits

98 Dr Kandasami’s Report opines that “[the accused’s] history ... suggests that he has Antisocial Personality traits”.²⁰⁴ Dr Kandasami explained that people with antisocial personality traits can exhibit behaviours that do not conform with social rules. These behaviours can manifest in the form of sudden increased impulsivity, reckless aggression, and having a lot of emotional rapid mood swings. They would also exhibit very impulsive aggressive behaviours that can result in significant harm to others.²⁰⁵ According to Dr Kandasami, he reached the conclusion that the accused has antisocial personality traits because the accused has a history of consuming drugs, took part in impulsive fights in the past, was previously arrested for housebreaking, and carried a weapon around

²⁰² 18 February 2021 Transcript at p 122 lines 1–9.

²⁰³ 18 February 2021 Transcript at p 103 line 1 to p 104 line 12; 19 February 2021 Transcript at p 8 lines 1–20.

²⁰⁴ AB at p 173 at para 24.

²⁰⁵ 24 February 2021 Transcript at p 40 line 24 to p 41 line 5.

with him in public places.²⁰⁶ Dr Kandasami obtained these pieces of information from the accused, as well as the accused's case notes at IMH.²⁰⁷

99 Dr Lee's Report stated that the accused's sister observed that the accused had not been impulsive, nor had he exhibited any violent or aggressive predilections. It also noted that the accused had been described to be an even-tempered and easy-going person.²⁰⁸ However, during examination-in-chief, Dr Lee conceded that the accused has impulsive traits, and that these traits constitute one of the reasons for the significant weakening of his ability to control his anger impulses.²⁰⁹

(6) The accused's sleep deprivation

100 The accused testified that he did not get much sleep that night. He mentioned that he wanted to sleep after taking Nitrazepam pills but he could not sleep.²¹⁰ Dr Kandasami's Third Report explained that sleep deprivation can increase one's irritability and may be a causal factor in the development of reactive aggression and violence.²¹¹ Dr Lee agreed with Dr Kandasami that sleep deprivation is a factor that could have contributed to the accused's failure to retain self-control.²¹²

²⁰⁶ 24 February 2021 Transcript at p 41 lines 8–17; AB at p 171 at paras 14–15.

²⁰⁷ 24 February 2021 Transcript at p 42 lines 4–30.

²⁰⁸ AB at p 334 at para 40.

²⁰⁹ 24 March 2021 Transcript at p 44 lines 22–27; 25 March 2021 Transcript at p 41 lines 13–26.

²¹⁰ 25 February 2021 Transcript at p 39 lines 21–24; 26 February 2021 Transcript at p 43 line 31 to p 44 line 6.

²¹¹ AB at p 323 at para 22.

²¹² 24 March 2021 Transcript at p 40 lines 18–25.

(7) The accused’s Nitrazepam intoxication

101 I accept the accused’s testimony that he consumed seven Nitrazepam pills prior to the Attack.²¹³ Urine samples from the accused were submitted for analysis on 17 August 2017. In HSA’s report dated 22 August 2017 (the “First HSA Report”), the following drugs, Nimetazepam, Flunitrazepam and Triazolam, were absent from the accused’s urine sample.²¹⁴ After clarification was sought by the police, HSA confirmed on 27 December 2018 that the same urine sample contained Nitrazepam (the “HSA Clarification”). The presence of Nitrazepam was not reflected in the First HSA Report initially because it is not a controlled drug.²¹⁵ The HSA Clarification constitutes objective evidence corroborating the accused’s account that he had consumed Nitrazepam pills prior to the Attack. It does not show how much Nitrazepam the accused consumed, but I am prepared to accept the accused’s testimony that he had consumed seven Nitrazepam pills prior to the Attack.

102 Expert evidence from Dr Kandasami and Dr Lee was adduced as to the possible effects of Nitrazepam. I summarise the possible effects:

- (a) Nitrazepam has a sedative effect on the consumer.²¹⁶ According to Dr Kandasami, Nitrazepam is a “longer acting” sleeping pill, *ie*, the drug will stay in the consumer’s blood for many hours and enable that person to sleep for long hours.²¹⁷

²¹³ 26 February 2021 Transcript at p 43 line 31 to p 44 line 6.

²¹⁴ AB at p 160.

²¹⁵ AB at p 160.

²¹⁶ 24 March 2021 Transcript at p 34 lines 6–19.

²¹⁷ 24 February 2021 Transcript at p 50 lines 19–28.

(b) Dr Lee testified that Nitrazepam intoxication can result in cognitive and volitional impairment, and this can contribute to a loss in control. This was accepted by Dr Kandasami.²¹⁸

(c) Nitrazepam can also induce anterograde amnesia. According to Dr Kandasami, Nitrazepam can induce anterograde amnesia, which in turn causes a person to have patchy memories of events.²¹⁹ Dr Lee's Report similarly mentioned that Benzodiazepines are known to cause anterograde amnesia, which is characterised by the partial or complete inability to recall recent events.²²⁰ In court, Dr Lee explained that anterograde amnesia manifests as gaps in memories, *ie*, "the person [would have] no recollection of what happened".²²¹

(d) Dr Kandasami gave evidence that there are rare side effects to Nitrazepam consumption, which include: confusion, paradoxical excitement in behaviour, irritability, aggressiveness, disturbances in thinking, mood swings, hallucinations and paranoia.²²² Dr Kandasami testified that there is no clear explanation as to why these rare effects manifest.²²³ Dr Lee also agreed that Nitrazepam consumption, in rare cases, can result in a person being "more excited, more aggressive, [and] more agitated".²²⁴

²¹⁸ AB at p 335 at para 46; AB at p 324 at para 25.

²¹⁹ AB at pp 323–324 at para 24.

²²⁰ AB at p 335 at para 47.

²²¹ 24 March 2021 Transcript at p 43 lines 3–10.

²²² AB at p 176 at para 6.

²²³ 24 February 2021 Transcript at p 53 lines 3–11.

²²⁴ 24 March 2021 Transcript at p 39 lines 4–13.

103 In assessing the effects of Nitrazepam on the accused, I will consider the following issues in the round: (a) whether the accused was experiencing any of these effects, (b) to what extent these effects (if any) were operating on the accused at the time of the Attack, and (c) whether these effects, if any, have a bearing on the accused’s level of self-control. To the extent that it is relevant to the determination of these issues, I start by summarising the evidence of Dr Kandasami and Dr Lee.

(A) DR KANDASAMI’S EVIDENCE

104 Dr Kandasami’s First Report was prepared after interviewing the accused on 6 September 2017, 13 September 2017 and 22 September 2017 at Changi Prison.²²⁵ In this report, Dr Kandasami concluded that the accused was “under the influence of Benzodiazepines according to his subjective reports of taking Nitrazepam prior to the alleged incident”.²²⁶

105 Dr Kandasami’s Second Report was prepared after the police sought further clarifications on the accused’s mental state at the time of the offence.²²⁷ In this report, Dr Kandasami again concluded that “[the accused] was under the influence of Nitrazepam [Benzodiazepines] at the time of his alleged offence”, but “it is not clear as to how soon he assaulted [the deceased] after he had taken Nitrazepam”.²²⁸ The conclusion reached in Dr Kandasami’s Second Report was based on the information supplied by the accused, as well as the fact that there were Nitrazepam tablets found in the accused’s possession.²²⁹ At the time

²²⁵ AB at p 168 at para 3.

²²⁶ AB at p 173 at para 26.

²²⁷ AB at p 175 at para 1.

²²⁸ AB at p 176 at para 5.

²²⁹ 24 February 2021 Transcript at p 49 lines 18–28.

Dr Kandasami’s Second Report was prepared, the HSA Clarification had not been issued. On the stand, when Dr Kandasami was asked whether the HSA Clarification would affect his opinion, Dr Kandasami said that it would not.²³⁰

106 In relation to whether the accused experienced any sedative effect of Nitrazepam, Dr Kandasami’s Second Report assessed the accused to be “awake and not sedated as supported by his account that he was watching a movie together with the [deceased] and they were arguing with each other”. He opined that the accused “might not have been sedated heavily in view of his long term [*sic*] dependence on Benzodiazepines”.²³¹ In this regard, Dr Kandasami testified that the accused informed him that he used Midazolam, a “shorter acting” sleeping pill, for a few years regularly before he went to prison some time in 2011 or 2012. The accused also informed Dr Kandasami that he used Nitrazepam “on and off” and would take it one to three times a month.²³² According to Dr Kandasami, the accused also informed him that Nitrazepam “did not have any effect on him” even after taking two pills of Nitrazepam, so he increased his dosage.²³³ With these factors in mind, Dr Kandasami opined that the accused had developed tolerance to the sedation effects of Nitrazepam.²³⁴

107 As for whether the accused experienced any rare side effects (see above at [102(d)]), Dr Kandasami’s Second Report stated that the accused did not report experiencing any of the rare side effects of Nitrazepam.²³⁵ However, in

²³⁰ 24 February 2021 Transcript at p 49 line 29 to p 50 line 13.

²³¹ AB at p 176 at para 6.

²³² 24 February 2021 Transcript at p 51 line 22 to p 52 line 18.

²³³ 24 February 2021 Transcript at p 60 line 17 to p 61 line 4.

²³⁴ 24 February 2021 Transcript at p 51 line 22 to p 52 line 18.

²³⁵ AB at p 176 at para 6.

his oral testimony, Dr Kandasami commented that patients may not subjectively notice that they are experiencing the rare side effects of Nitrazepam – whether they are experiencing these rare side effects must be assessed through objective observation.²³⁶

108 Dr Kandasami’s Third Report was prepared after he interviewed the accused again on 15 October 2019, and with the benefit of Dr Lee’s Report, Fauzi’s and Shaffika’s witness statements and the accused’s statement. In this report, Dr Kandasami defined the term “impairment” as referring to a deterioration of an individual’s judgment and/or physical ability, whereas the term “intoxication” referred to the condition of having physical and mental control markedly diminished by the effects of drugs.²³⁷ He also applied the Diagnostic Statistical Manual of Mental Disorders Fifth Edition (“DSM-5”) criteria for the purposes of assessing whether the accused was under Benzodiazepines Intoxication. DSM-5 is applied as follows:²³⁸

... [T]he development of one or more of these signs or symptoms [**slurred speech, incoordination, unsteady gait, Nystamgmus, impairment in attention or memory, stupor or coma**] either during or shortly after Benzodiazepines use is sufficient enough for diagnosing Benzodiazepines Intoxication.

...

[emphasis in original]

109 Dr Kandasami’s Third Report proceeded on the basis that the accused took 35mgs (seven tablets) of Nitrazepam, over a period of ten to 11 hours, with most of that dose (25mgs) taken within two to three hours before the alleged

²³⁶ 24 February 2021 Transcript at p 53 lines 28–32.

²³⁷ AB at p 322 at para 18.

²³⁸ AB at p 322 at para 17.

assault on the deceased. The report stated that this is above the average adult therapeutic dose for insomnia, which is 5–10mgs.²³⁹

110 I set out a summary of the key points from Dr Kandasami’s Third Report:

(a) The accused was not in a severely intoxicated state at the time of the alleged incident, even after taking an overdose of Nitrazepam. This was because:²⁴⁰

(i) The accused did not show signs of heavy sedation. The absence of heavy sedation might be because he was still experiencing a degree of tolerance to the drug.

(ii) The accused did not show signs of psychomotor skills slowing down.

(b) However, if the DSM-5 criteria were applied strictly, given the accused’s patchy memory loss for certain events that took place a few hours after the Attack, and evidence of his impulsive and aggressive behaviour, “it is possible that he was under some degree of intoxication or ‘impairment’ with deterioration in his judgment”.²⁴¹

(c) Nitrazepam can induce anterograde amnesia, and this might have caused the accused’s patchy memories of events which took place a few hours after the Attack.²⁴²

²³⁹ AB at p 321 at para 12.

²⁴⁰ AB at pp 321–322 at paras 12, 14–16 and 19.

²⁴¹ AB at p 322 at paras 17 and 19.

²⁴² AB at pp 323–324 at para 24.

(d) It cannot be ruled out that the Nitrazepam contributed to the accused's loss of inhibition and paradoxical increased aggression, considering the high dose of Nitrazepam he consumed a few hours prior to the Attack.²⁴³

(e) The accused would have had some degree of cognitional and volitional impairment at the time of the offence. This was contributed, in part, by his consumption of a high dose of Nitrazepam. Other factors include extensive provocation by the deceased, the accused's underlying impulsive personality traits, and the accused's sleep deprivation.²⁴⁴

(B) DR LEE'S EVIDENCE

111 Regarding the effect of Nitrazepam on the accused's judgment and cognitive control, Dr Lee's Report concluded as follows:²⁴⁵

Based on research on pharmacokinetics of nitrazepam, peak plasma nitrazepam concentration is achieved at 180 minutes after a dose of 10 milligrams... The sedative drug effect is highly significant when the plasma levels of nitrazepam is rising. ... [B]ased on the accused's ingestion of nitrazepam at 12am and 2am, the peak plasma concentration of nitrazepam in his body was achieved at between 3am and 5am on 16 August 2017. He would be experiencing a significant level of drug effect due to rising plasma levels of nitrazepam at and around the time of the alleged offence which occurred at approximately 4.30am. It is highly likely that the effect of nitrazepam had weakened the elements of self-control he normally used to control his anger reactions. ***The nitrazepam intoxication would have resulted in significant cognitive and volitional impairment at the time of the alleged offence insomuch as he did not appreciate the consequences of his alleged act and lacked conscious control of his conduct.***

...

²⁴³ AB at p 323 at para 22.

²⁴⁴ AB at pp 323–323 at paras 23 and 25.

²⁴⁵ AB at pp 335–336 at paras 46 and 48.

[The accused’s] judgment and cognitive control ... would have been significantly impaired by the intoxicating effects of high doses of nitrazepam which was consumed in excessive amount within a short span of 4 hours before the alleged offence.

[emphasis in original removed; emphasis added in bold italics]

Apart from the “excessive amount” of Nitrazepam consumed by the accused prior to the Attack in a short span of time, Dr Lee also justified his conclusion that the accused’s cognition was significantly impaired on the basis that the accused alleged that he had reduced awareness of his environment, and was feeling “blur” and “dazed”.²⁴⁶

112 During examination-in-chief, Dr Lee testified that there was “severe” intoxication because the accused had taken substantially more Nitrazepam than the recommended dose.²⁴⁷ However, after the Prosecution brought Dr Lee through objective evidence which included the accused’s ability to recount the incident down to the second and the accused’s post-killing conduct,²⁴⁸ Dr Lee said:²⁴⁹

Q Sure. Now, based on what I have told you so far, all these points, ***would you like to revise your opinion that at the time of the knife attack, he was under severe Nitrazepam intoxication and having significant cognitive and volitional impairment?***

A So thank you for giving me the chance. So, Your Honour, ***I would make a adjustment to the word “severe”.*** Maybe I---after having all the information which I was shown today, I would---I would say at best, maybe ***the most is moderate but nonetheless significant enough to cause cognitive impairment***

²⁴⁶ 24 March 2021 Transcript at p 81 lines 3–18; AB at p 331 at para 26.

²⁴⁷ 24 March 2021 Transcript at p 38 line 26 to p 39 line 3.

²⁴⁸ 25 March 2021 Transcript at p 66 line 31 to p 67 line 13, p 67 line 25 to p 70 line 7, p 70 line 7 to p 72 line 2 and p 76 lines 1–25.

²⁴⁹ 25 March 2021 Transcript at p 77 lines 12–21.

to---to this person, to [the accused]. So I would not use the word “severe”, but I would say moderate but significant.

[emphasis added]

113 Next, Dr Lee opined that accused was “unlikely” to build up tolerance to Nitrazepam.²⁵⁰ He noted that the accused would take Nitrazepam one to three times per month, two pills each time.²⁵¹ He also noted that the accused took Nitrazepam to help him fall asleep, but it did not work all the time.²⁵² Nevertheless, his opinion was that the fact that Nitrazepam did not work on previous occasions does not necessarily mean that the accused had built up a tolerance to Nitrazepam, as other factors such as a noisy environment, distractions, worries or anxiety, could have put the accused out of a sleepy state on those previous occasions.²⁵³

114 On whether it was possible that the accused experienced a paradoxical reaction of increased excitability and aggression as a result of the Nitrazepam pills, Dr Lee testified that he could not be certain whether the accused had experienced this paradoxical reaction: while the accused displayed disinhibited behaviour in losing control over his impulses, he did not see all the other features of a paradoxical reaction in the accused.²⁵⁴

115 Finally, in relation to whether the accused suffered from anterograde amnesia, Dr Lee observed that the accused had patchy recollections of events after the Attack, in that he could not remember places he went to and the things

²⁵⁰ 25 March 2021 Transcript at p 46 line 30.

²⁵¹ 25 March 2021 Transcript at p 45 lines 7–15.

²⁵² 25 March 2021 Transcript at p 45 lines 15–21.

²⁵³ 25 March 2021 Transcript at p 46 lines 4–11 and p 49 line 26 to p 50 line 10.

²⁵⁴ 24 March 2021 Transcript at p 39 lines 14–27.

he did.²⁵⁵ In his report, he opined that it was not unexpected that the accused had patchy memories after ingesting high doses of Nitrazepam.²⁵⁶

(C) THE EFFECT OF THE NITRAZEPAM PILLS CONSUMED BY THE ACCUSED

116 On the issue of whether the accused had experienced the rare side effects of paradoxical excitement in behaviour, irritability and aggressiveness at the time of the Attack, both Dr Kandasami and Dr Lee entertained the *possibility* that this could have happened, but ultimately declined to put forward a firm view on this matter (see above at [107], [110(d)] and [114]). In these circumstances, I am unable to find on a balance of probabilities that the accused experienced this rare side effect during the time of the Attack.

117 The rare side effects of Nitrazepam aside, Nitrazepam can also cause cognitive and volitional impairment, and thereby contribute to a reduction in control. Dr Kandasami and Dr Lee both accepted that the accused's cognition and volition were impaired as a consequence of his consumption of Nitrazepam. Their differences arose in relation to the extent of the impairment. Having considered the evidence and opinions of both Dr Kandasami and Dr Lee, I gratefully adopt Dr Kandasami's considered conclusion that the accused was under some degree of intoxication but was not in a severely intoxicated state at the time of the Attack (see above at [110(a)] and [110(b)]). Reading this conclusion alongside Dr Kandasami's definition of "intoxication" (see above at [108]), what Dr Kandasami meant was that the accused's physical and mental control was diminished, but the reduction in control was not at all severe. I prefer Dr Kandasami's evidence to Dr Lee's evidence for the following reasons.

²⁵⁵ 24 March 2021 Transcript at p 41 lines 5–15; AB at p 332 at para 28.

²⁵⁶ AB at p 335 at para 47.

118 First, Dr Kandasami considered a range of relevant information in arriving at his opinion. For instance, he took into account both the accused’s pre-Attack and post-Attack conduct in reaching the view that the accused did not display any signs of heavy sedation and might have been experiencing some degree of tolerance to the sedative effects in the light of the accused’s drug history.²⁵⁷ He then weighed these against the possibility that the accused could have suffered from anterograde amnesia hours after the Attack, as well as the accused’s impulsive and aggressive behaviour, before concluding that the accused was intoxicated to “some degree”.²⁵⁸

119 Second, Dr Lee’s opinion, that the accused experienced significant cognitive and volitional impairment, was rendered without sufficient substantiation as to why the accused was unlikely to have built up a tolerance to Nitrazepam, notwithstanding that Nitrazepam did not put him to sleep all the time. Although Dr Lee gave a number of reasons, such as a noisy environment, distractions, worries and anxiety that can affect the sleep induction process, he was unable to testify as to the exact cause of Nitrazepam being ineffective for the accused.

120 Third, after being furnished with additional information by the Prosecution, Dr Lee said that he would revise his opinion from “severe” to “moderate” intoxication, while still maintaining his view that there was significant cognitive impairment (see above at [112]). No satisfactory explanation was given as to why the level of intoxication was calibrated downwards while the degree of impairment to cognition remained the same.

²⁵⁷ AB at pp 321–322 at paras 15–16.

²⁵⁸ AB at p 322 at para 19.

Conclusion on the Subjective Test

121 Summing up the foregoing analysis, there are four factors which cumulatively point towards the likelihood that the accused was no longer the “master of his own mind” upon hearing the vulgarities, insults and threats directed at him by the deceased during their heated argument:

- (a) the tremendous force exerted by the accused in stabbing the deceased;
- (b) the accused’s anti-social personality traits;
- (c) the accused’s irritability due to sleep deprivation; and
- (d) the fact that the accused’s mental control was reduced to some degree as a result of his consumption of Nitrazepam pills.

122 The accused had subjectively understood the deceased to be cursing his mother.²⁵⁹ As the accused had strong feelings for his mother,²⁶⁰ he was enraged by the deceased’s foul language. To aggravate matters, his ego was also hurt as the vulgarities were hurled at him in the presence of two of his friends.²⁶¹ These, together with the accused’s irritability due to a lack of sleep, anti-social personality traits, and reduced mental control as a result of Nitrazepam consumption, displaced the accused as the master of his own mind, and led him to stab the deceased with such immense force that the Knife pierced through the full thickness of the sternum.

²⁵⁹ See for example AB at p 288 at para 6; AB at p 292 at para 21.

²⁶⁰ See for example, 26 February 2021 Transcript at p 7 line 1 to p 8 line 6.

²⁶¹ 26 February 2021 Transcript at p 50 lines 29–32.

Whether the Objective Test is fulfilled

How the Objective Test is to be applied

123 Whether the provocation is grave and sudden must be determined by reference to a reasonable man who is of the same age and sex of the accused, and who shares the peculiar characteristics (which form the subject of provocation) as the accused (*Astro bin Jakaria* at [120]). The question is whether the provocation was grave enough such that this reasonable man would have been so provoked as to lose self-control.

124 It is now settled that there are at least two types of characteristics which the courts can take into account in assessing whether the Objective Test has been met: (a) characteristics affecting a similarly placed reasonable man’s level of self-control; and (b) characteristics affecting the gravity of the provocation (*Pathip Selvan* at [51]).

125 Courts can take into account the accused’s mental background in assessing the gravity of the provocation. Events of the preceding days can form this mental background (*Pathip Selvan* at [57] and [58]; *Public Prosecutor v Kwan Cin Cheng* [1998] 1 SLR(R) 434 (“*Kwan Cin Cheng*”) at [50]). Such events can generate enough tension such that the provocative conduct of the deceased becomes sufficiently grave the moment it occurs (see *Sundarti Supriyanto* at [161]).

126 The accused’s personal characteristics, in so far as they affect the gravity of the provocation, can also be accounted for (*Pathip Selvan* at [53]). For instance, where a homosexual man is taunted for his homosexuality, the issue to be considered is whether a homosexual man having ordinary powers of self-control might, in comparable circumstances, be provoked to lose his self-control

(see *Attorney-General for Jersey v Holley* [2005] 2 AC 580 at [11], cited in *Pathip Selvan* at [54]). However, individual peculiarities of the accused which merely affect his power of self-control but not the gravity of the provocation cannot be taken into account for the purposes of the Objective Test (*Kwan Cin Cheng* at [49]).

127 An accused’s mental abnormality is only relevant for the purposes of the Objective Test if it formed the subject of the provocative conduct. If not, the accused’s mental abnormality is not a relevant characteristic that the reasonable man can bear for the purposes of the Objective Test (*Pathip Selvan* at [55]). In the case of *Pathip Selvan*, the court disregarded the fact that the accused suffered from attention deficit disorder/hyperactivity disorder which made him more easily provoked and prone to rage outbursts, because this deficiency had “no apparent nexus whatsoever to the subject matter of the provocation” (*Pathip Selvan* at [56]).

128 The reasonable man is also one who is sober. Hence, the accused’s state of intoxication is irrelevant to the assessment of whether the Objective Test has been fulfilled (*Astro bin Jakaria* at [120]). While *Astro bin Jakaria* concerned an accused who drank alcohol, this proposition applies equally to the consumption of drugs, such as Nitrazepam.

129 Before turning to the facts, it is helpful to bear in mind the words of the Court of Appeal in *Pathip Selvan* at [34]:

The partial defence recognises that individuals can in limited situations be emotionally overwhelmed and offend under conditions of extreme fear, sadness, depression or even jealousy. This is a difficult area of the law that requires the courts to balance contemporary standards and the societal more of the day with the need to deter violent conduct emanating from rage. ...

Application to the facts

130 The provocation is objectively “sudden”. Immediately after the words “your mother’s cunt” were uttered, the accused went into the kitchen, picked up the Knife, walked back into the room and stabbed the deceased. All these happened in a matter of seconds. Even though there was a brief breathing space between the provocation and the Attack, it was certainly not lengthy enough to constitute a cooling-off period that could put an end to the provocation.

131 However, the provocation was not objectively “grave”. Applying the legal principles set out above, the accused’s anti-social personality traits, irritability due to sleep deprivation, and reduced mental control as a result of Nitrazepam are irrelevant considerations for the purposes of the Objective Test. These are individual peculiarities and abnormalities which merely affect the accused’s power of self-control, but do not affect the gravity of the provocative conduct. A reasonable man is also not someone labouring under Nitrazepam intoxication.

132 What can be taken into account, when undertaking an objective review from the perspective of a reasonable man, is the accused’s mental background. In the present case, this mental background would comprise of the deceased’s aggressive behaviour towards the accused and the other vulgarities and threats hurled by the deceased before the Attack. The reasonable man would also be placed in a situation where all these insults and vulgarities were uttered in the presence of Fauzi and Shaffika. The question to be confronted is whether the deceased’s insults to the accused’s mother would be sufficiently “grave” to a reasonable man, in these circumstances.

133 In this regard, I do not think that the deceased’s insults to the accused’s mother were sufficiently “grave”. The insults to the accused’s mother were far

too common to cause a reasonable man to lose self-control, and the foregoing circumstances did not indicate that the deceased's insults relating to the accused's mother constituted the "proverbial last straw for the accused".

134 The ubiquity of the insults referencing the accused's mother weighs against a finding that the provocation was "grave". How commonly used a foul language is has to be taken into account in assessing the degree of shock or anguish a similarly placed reasonable man would feel. This is not to say that foul language can never amount to grave provocation. It is well-settled that words can constitute provocation. Moreover, in the case of *Pathip Selvan*, the Court of Appeal found that the insult which the deceased directed at the accused was sufficiently "grave" as it was the "proverbial last straw for the accused" in the light of the accused's mental background (*Pathip Selvan* at [61]). The same, however, cannot be said of the present facts. I acknowledge that prior to the Attack, the deceased was behaving aggressively towards the accused and antagonising the accused by uttering offensive vulgarities and insults in the presence of their mutual friends. But at its highest, the present facts merely involved a heated quarrel between friends who had disagreements over the treatment of a mutual friend, and over the accused's payment of his share of the rental. These disagreements were accompanied by threats to cause harm to the accused and to inform CNB about the activities of the accused. The prevailing tension between the duo simply did not rise to a level that would have led a reasonable man to lose self-control when the deceased uttered insults relating to the accused's mother. The present facts do not at all permit, from the viewpoint of an objective reasonable man, a finding of grave provocation.

135 The accused had described himself to Dr Lee as someone who would flare up and become enraged when others cheat him or put him down in front of other people. He also told Dr Lee that he is highly sensitive to unkind remarks

or swear words that were directed at his parents.²⁶² The accused's self-assessment of his own personality may well be true, but the partial defence of grave and sudden provocation does not afford protection to an ill-tempered man. As aptly put by Lord Diplock in *Director of Public Prosecutions v Camplin* [1978] AC 705 (cited in *Pathip Selvan* at [51]):

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

Conclusion on the defence of grave and sudden provocation

136 Since the Objective Test is not fulfilled, I find that the accused is not entitled to rely on the partial defence of grave and sudden provocation, notwithstanding that the Subjective Test is met.

Conclusion

137 All three elements of s 300(c) of the Penal Code have been established beyond a reasonable doubt. The defence of grave and sudden provocation has not been established on the balance of probabilities. I therefore convict the accused on the charge of murder under s 300(c) of the Penal Code.

²⁶² AB at p 330 at para 18; 25 March 2021 Transcript at p 42 lines 7–11.

138 I will hear parties on sentencing.

Dedar Singh Gill
Judge of the High Court

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Chambers) for the Prosecution;
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