Public Prosecutor v Juminem and Another
[2005] SGHC 165

Case Number : CC 5/2005

Decision Date : 05 September 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Amarjit Singh, David Khoo and Jason Chan (Deputy Public Prosecutors) for the Prosecution; Jimmy Yim SC (Drew and Napier LLC) and Cosmas Gomez (Cosmas and Co) for the first accused; Alvin Yeo SC (Wong Partnership) and Foo Cheow Ming (Khattar Wong) for the second accused

Parties : Public Prosecutor — Juminem; Siti Aminah

Criminal Law – Special exceptions – Diminished responsibility – Accused domestic maid charged with murder of employer – Whether accused suffering from depressive order amounting to abnormality of mind causing substantial impairment of mind at time of offence – Section 300 Exception 7 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Provocation – Accused domestic maid charged with murder of employer – Whether physical and verbal abuse of accused by deceased amounting to grave and sudden provocation by deceased – Section 300 Exception 1 Penal Code (Cap 224, 1985 Rev Ed)

5 September 2005 *Judgment reserved.*

Choo Han Teck J:

The accused and their employers

1 On 2 March 2004, a 47-year-old woman ("V") was strangled to death in the bedroom of her flat. V worked as a purchasing officer. Except for the company of her maid (the first accused), V lived alone after her divorce from her second husband, H. V had a grown-up daughter by her first husband, and two sons, aged 11 and 12 years respectively, from her marriage to H. H was granted care and control of the two boys after his divorce from V, and he lived with the boys and his own mother in a flat at Pasir Ris. Although divorced, V and H remained on goods terms and he often took her to work in his car. The second accused was H's maid. The two accused were from Indonesia. The first accused was 18 years old (born 12 April 1985) and the second accused was 15 years old (born 5 April 1988) at the time of the offence. It was the first time that both the accused persons had worked abroad. The first accused started work with V on 2 September 2003. The second accused started her employ under H on 2 October 2003. Being under-aged, she gained employment by misrepresenting her age. By a private arrangement between V and H, V took care of the administrative matters in respect of both maids (including the payment of their salaries) and H provided the money for their salaries. The first accused was contracted to be paid $240 a month, of which $230 was to be paid to the employment agent for seven months because she had to repay the loan of $1,700 needed to get herself employed here. The second accused was paid $230 a month, of which $220 was paid to her agent. So for the first seven months, the two accused received $10 each month from their salaries.

2 The two accused were jointly charged for V's murder. The Prosecution led evidence, including various statements made by the two accused, in which they admitted to killing V on 2 March 2004. Money and valuables belonging to V were found in the possession of the second accused in H's flat, and two cheques from V's account were found with her signature forged. The first accused admitted that she forged those signatures. The Prosecution's case was based on murder with intent, that is to say, the two accused killed V with the intention of killing her. Although it was not necessary to

establish motive in order to prove murder, the Prosecution sought to show that the accused killed for money and revenge. The issue of motive is, however, relevant in this case because of its connection with the mental capacity of the accused at the time of the crime. I shall, therefore, consider the issue of motive together with the psychiatric defence. Mr Amarjit Singh, Mr David Khoo, and Mr Jason Chan presented the Prosecution's case. Mr Jimmy Yim SC and Mr Cosmas defended the first accused. Mr Alvin Yeo SC and Mr Foo Cheow Ming defended the second accused. Both accused persons relied on the defence of diminished responsibility under Exception 7 to s 300 of the Penal Code (Cap 224, 1985 Rev Ed). The first accused also relied on the defence under Exception 1, namely, the defence of grave and sudden provocation. Both accused elected to testify. They each called a member of her family to testify on her background and character. The first accused also relied on the expert testimony of Dr Douglas Kong. The second accused called two experts on her behalf. They were Dr Ung Eng Kean and Dr Clare Ong Kwee Hiong. Dr Kenneth Koh and Dr Cai Yiming testified as expert witnesses on behalf of the Prosecution in rebuttal of the evidence of the defence experts.

The crime

3 The evidence from both accused, in their statements to the police and their testimonies in court, established to my satisfaction the following facts in respect of the killing. I shall revert to the disputed issues of motives and mental culpability shortly. The first accused first formed the intention to kill V about a week before 2 March 2004. In her statement to the police on 6 March 2004, she said that V scolded her, and she felt insulted when V said that she could not cook. In the same statement, she mentioned that V had punched and pinched her arms on previous occasions. She also recounted that V borrowed $300 from her and had not repaid that money. She told the second accused that she planned to kill V and asked if she would help her with it. She decided, however, to defer the act for a week to see if things might improve. They did not; so the first accused telephoned the second accused on 1 March 2004 and told her that they should kill V that night. The second accused agreed. In her testimony, the second accused said that between the first instance and the evening of 1 March, she and the first accused had talked about killing V on one other occasion, namely on a Thursday night when the first accused stayed over at H's flat (because V was away on a cruise from 26 to 28 February 2004). After talking to the first accused on 1 March 2004, the second accused took a taxi to V's flat after midnight (that is, in the early hours of 2 March 2004) and met the first accused at the ground floor of V's block of flats. They sat on a bench and talked briefly about killing V. The two accused then went into the flat. The first accused changed into dark clothing in case V woke and recognised her. She also put on her sports shoes because the second accused (who arrived at the flat wearing her sports shoes) indicated that she was not prepared to stomp on V. The duo entered V's bedroom. The first accused covered V's face with a pillow and when V struggled, the second accused tied V's feet with the string that she (the second accused) had brought with her. They then punched and jumped on V's abdomen. At one point, while the second accused held on to V, the first accused ran to the kitchen and returned with a knife, but the second accused dissuaded her from using it. The two accused then swapped places and the second accused took the knife back to the kitchen and returned with a bottle of wine, randomly selected from the refrigerator. The two of them took turns to hit V with it. V screamed, and so the first accused strangled her with her hands. The second accused also put her hands round V and strangled her too. Eventually, V became motionless and died. The two accused then moved V's body back to the position she was in before the struggle, and covered her with a blanket. Thereafter, they took her keys and unlocked her drawers where they found $8,020 in cash. They also took away a POSBank account book and her credit cards. The first accused also forged V's signature on a cheque for $25,000 made payable to the second accused. Another forged cheque was discarded because the first accused was not satisfied with the quality of the forged signature. That cheque was thrown into the dustbin in the first accused's room and was subsequently recovered by the police. The first accused also took two gold rings from V and gave them to the second accused, telling her that that

should give the impression that V was robbed. The police have recovered all the items taken by the two accused persons. I was satisfied that a case had been made out which, if unrebutted, would warrant the conviction of both accused, and I therefore called upon their defence.

The Exception 1 defence (grave and sudden provocation)

4 The defence of grave and sudden provocation is found under Exception 1 to s 300. This defence was put forward as the second and alternative defence on behalf of the first accused only. I shall deal with this defence first because it is a straightforward one. Exception 1 to s 300 reads as follows:

> 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.

I could not find, or interpret any of the evidence adduced, including that from the Defence, with all the latitude that reason and law might permit me, and conclude that anything V had done could be considered grave or sudden. Mr Yim referred to the evidence that V was said to have hit the first accused on the head with a television remote control on the evening before she was killed. That assault, if it had taken place, did not result in any injury other than the pain of being hit. Hitting another person in anger is, naturally, an act of provocation. The test of whether an act was grave and sudden is an objective one and not based on whether the accused, no matter what her state of mind was, perceived it to be grave and sudden. The court can take into account the sensitivities of an accused person, and the special circumstances of his or her case, in determining whether the act was grave and sudden. In the circumstances of this case, I do not think that there was any grave or sudden provocation by V. If the accused had laboured under some mental distress or disorder that warped her sense of the nature of the act, then the appropriate defence would be one under Exception 7. Thus the defence under Exception 1 had not been proved to my satisfaction, and I shall now consider the first accused's defence under Exception 7.

The Exception 7 defence (diminished responsibility)

5 This is the complex part of the case, especially so in the case of the first accused, and it involved major disputes in law and evidence. Exception 7 provides as follows:

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

The court must ultimately decide whether the accused persons suffered from an abnormality of mind that substantially impaired their mental responsibility for the crime. But before that question is answered, there is an important prior question, namely, whether the accused persons were suffering from any disease that the court could find as leading to, or causing, the accused persons to suffer from an abnormality of mind. In this regard, counsel for the Defence adduced psychiatric and psychological evidence in respect of each accused, and the Deputy Public Prosecutor ("DPP") called evidence in rebuttal. I shall deal with the evidence of each accused in turn for convenience.

The first accused

Symptoms of depression and the first accused's case

6 Dr Douglas Kong testified on behalf of the first accused. He graduated with a Bachelor of Medicine and Bachelor of Surgery ("MBBS") degree in 1974 and became a qualified psychiatrist in 1981. He provided a statement of his qualifications and professional experience. I was satisfied that he was qualified to provide relevant expert testimony. While they disagreed with Dr Kong's conclusions, the DPP and his consultant psychiatrist, Dr Kenneth Koh, did not challenge Dr Kong's credentials as an expert. I should mention at this point that the Defence, similarly, did not challenge the credentials of the Prosecution's experts although their opinions were severely tested on various grounds.

7 In the opinion of Dr Kong, the first accused was suffering from "a Reactive Depression of quite moderate severity for about at least a month prior to the [offence]". The disorder is a psychiatric illness that is known by various names, but is essentially a mood disorder of varying degrees and, consequently, its effect on each patient would differ accordingly. Dr Kong also pointed out that the first accused, at age 18, was considered an adolescent in psychological terms. In psychology, there are no clear or distinct boundaries that determine when a person leaves the cocoon of puberty and becomes an adult, unlike the domain of law, where by legislation or judicial pronouncement, a person may be deemed to be an adult when he attains the age stipulated by the Legislature or the court as the case may be. So, although psychologists roughly describe early adolescence as the ages between 12 and 14 years, middle adolescence as from 15 to 16 years, and late adolescence as from 17 to 19 years, they recognise that it is possible that a person who is 19 may be sufficiently mature and be counted as an adult, and *vice versa*, an older person may be so immature that it may legitimately be correct to classify him as an adolescent. In the present case, the DPP proceeded on the basis that the first accused was sufficiently mature and clear-headed at the time of the offence although he did not seriously challenge the adolescent tag that the defence expert put on her. The Prosecution challenged the substantive diagnosis by Dr Kong that the first accused suffered from depression.

8 The textbook authority relied upon by Dr Kong maintained that:

> [A] major depressive episode is characterized by five or more of the following symptoms that have been present during the same 2-week period and represent a change from previous functioning: 1) depressed mood most of the day (can be irritable mood in children and adolescents), 2) markedly diminished interest or pleasure in all (or almost all) activities, 3) changes in appetite and weight, 4) insomnia or hypersomnia, 5) psychomotor agitation or retardation, 6) fatigue or loss of energy, 7) feelings of worthlessness or excessive or inappropriate guilt, 8) diminished ability to think or concentrate, 9) recurrent thoughts of death.

The text also mentioned that the "only distinction between adult and adolescent criteria is the allowance of either irritable or depressed mood in adolescents compared with depressed mood only in adults": see Jerry M Wiener & Mina K Dulcan, *Textbook of Child and Adolescent Psychiatry* (American Psychiatric Publishing, Inc, 3rd Ed, 2004) at p 437. Dr Kong was of the opinion that the first accused exhibited at least six of the symptoms described above, and they were a depressed mood, markedly diminished interest in most activities, loss of appetite, insomnia, fatigue and loss of energy, and feelings of guilt and worthlessness. It appears that there are at least two major definitive guidelines on depression. The Defence relied on the Diagnostic and Statistical Manual of Mental Disorders, and the Prosecution on the World Health Organization's International Classification of Diseases (ICD-10). However, the experts from both sides agreed that the two guides were very much the same. The disagreement lay with the evidence of symptoms of depression (as a psychiatric illness) in the accused.

9 Mr Yim presented the case for the first accused by drawing first on the evidence of the first

accused's employment with V. From the unchallenged evidence of her brother-in-law, Tugino, we are told that the first accused is the seventh and youngest child of her parents who are padi farmers in Margomulo, a village in Lampung, Sumatra. The people from her village wake at 5.00am and work till 4.00pm, when they would sit near the padi fields and chitchat till sunset. Bedtime for the villagers is about 11.00pm. When she was at home, the routine for the first accused was roughly the same; she went to school from 7.30am to 3.00pm; and worked in the padi fields on school holidays. Tugino testified that the first accused was the brightest child among her siblings and the only one to have completed Senior High School. She was diligent and well liked. She came to work in Singapore in order to help her aged parents financially.

10 The first accused started work for V on 2 September 2003. On the next day, 3 September, the first accused wrote to tell her parents that her employer was "pretty and kind" and that she hoped that she could complete her contract, and thereafter have it extended. Within three weeks, the first accused began to experience loneliness and homesickness. Writing to her parents on 26 September 2003, she hoped that their reply would cheer her. In the same letter, she enquired about her boyfriend, Heri, and, in a confidential tone, wrote:

> I'm still the same as before and I will never change. Mother, I want to tell you "story" about my employer who is very fussy but if she started to nag – my employer would not get angry for long. Mother, athough I was scolded every day, I tried to tolerate because I have to earn money and I regarded this as a "test" but the grandmother (the mother-in-law of my madam likes me very much) she often gave me food and money. Even the maid who worked for her had been sent back because she ran away from the house.

The letter abruptly broke into a Javanese dialect, which was subsequently translated as follows:

> Mother-Father. I miss mother and father very much. I want to go back earlier. I want to be at home like last time where I can play together and have fun with the family. Mother I feel like crying but it is no use to cry at other people's place. Mother, father – do you miss me? Mother how is my younger brother "Egi" right now? Definitely he is now grown already and has he become naughty or not? Mother, how about my elder sister "Lasuni" Did she manage to settle the matter last time or she did not manage to settle? I suggest to my elder sister "Lasuni" that there is no need for "Lasuni" to wait for "Mas Pur" He is not the only one in the world. There are lots of males in the world. What for waiting for him? If she has not made any decision I pray for her that she would get a replacement who is better than him in everything.

She then continued her letter in the standard Indonesian language in which she requested her parents to give her telephone number to her boyfriend, Heri, and asked that he telephone her because she missed hearing his voice. There seems to be a minor discrepancy in that in this letter she referred to a younger brother although she had testified that she was the youngest in the family. I do not think that there is any significance in this discrepancy. Although the sudden change from standard Indonesian to Javanese and back again begged for an explanation, none was elicited from either the first accused or any of the psychiatric experts. The first accused also maintained a diary in which the entries from 30 September 2003 to 24 December 2003 were recorded in running order as dated. There was another short series of entries written on an old 2003 diary. In her testimony the first accused stated that the second group of entries were written in February 2004, some on the 10th on which the date 10 February was written, and those before that entry were written on days prior to that date.

11 I shall now revert to the September to December 2003 entries. Some of the entries lamented the distance between herself and her boyfriend. Some of them expressed feelings of loneliness, as

when she wrote on 30 September, "My days passed by in loneliness without a friend". On 2 October, she noted that that was the day she was required to record all the work she had done. She wrote:

> Today is the first day of which I must record all work done by me. Oh God, may this trial passed over quickly and I pray to you to make my employer realise her fault so that I can endure all hardships. God please protect me from evil.

And exactly a month after she wrote to her parents to say that she hoped to complete her contract and also get an extension of it, she wrote to say that she hoped to return to Indonesia soon, and that her "daily life in Singapore is getting more and more boring. I hope time flies and I return to my village that I miss so much, soonest. God I pray to You, please speed up the days and time so that I do not have to stay in this boring city for long." The numerous journal entries revealed a troubled and unhappy writer. I will give a fuller account and consideration of these entries after I have completed the submission of counsel. A brief summary will suffice for the moment. The words recorded in the journal between September and December 2003 require no effort or special interpretation to be understood as words of loneliness and despair:

> Everyday my life is covered with darkness and sadness. There is no cheer in my life at all;
>
> God, for how long must I be like this. Being lonely all the time. At times she returns and become angry. I had no idea what wrong I had done.

On the eve of the Muslims' holy day she wrote,

> Tomorrow it will be Hari Raya Adil Fitri, a day to be celebrated by all Muslims. However, what's to become of me who has to work without knowing time. I feel very sad because of the said day, I should be happy with my family. I had to leave everything for money, which is only one cent. Oh God, is this the path of my journey in life. Till when must I accept all these. I feel like running away from reality but what can I do. I cannot do anything.

This part of her journal ended with an entry on Christmas Eve as follows:

> One more day it will be Christmas and after that it will be New Year. My days passed in loneliness, making me more and more bored with this city. Oh God, please speed up the time so that I can return to my country soon. With the New Year 2004, may my work improve and my employer becomes more reasonable. God, I pray for you to make my employer realise her faults. Amen.

12 I shall leave aside the issue of the first accused person's state of mind for the time being, to consider the issue concerning the loss of pleasure in pursuing her hobby and activities. Counsel submitted that by November 2003 the first accused "had experienced a diminished interest in diary writing, an activity that she found comfort in doing in the months of September and October. In October alone, she made 28 entries. In contrast, she had only two entries in November, three in December and one in January 2004." The first accused also testified that she had lost her desire to write. She said that she did not have the time and she felt very tired because the workload was too much. She said, "I felt very stressed because my employer scolds me often … I felt very stressed thinking of the treatment that my employer gave me."

13 In respect of changes in her weight, the first accused testified that she weighed 50kg when she came (September 2003), and by March 2004, she weighed 46kg. The loss of weight was apparent from the photographs taken and her appearance in the photograph of herself after she was arrested on 2 March 2004. Dr Kong was of the opinion that the first accused had bouts of insomnia from

January 2004. He accepted the medical history of the first accused's difficulties in falling asleep as well as her problems with early morning awakenings. The latter presents symptoms of waking up unusually early, and is accepted medically as a form of insomnia. The second accused testified that the first accused had told her about her insomnia. The testimony of the second accused in this regard was admitted for corroborative purposes only (I leave the questions relating to the weight of evidence aside for the time being).

14 The first accused testified that about December 2003 onwards, she started feeling more tired and generally lacking in energy. H's mother also testified that she was told by the first accused in January that she was feeling tired. Her testimony also conveyed the impression that the first accused appeared as if she was in want of sleep, prompting Lim to tell her that she must rest if she felt tired. Lim also noticed that the first accused began to have acne on her face. The second accused had also heard the first accused saying that she was tired. The first accused testified that in the months of January and February 2004, she had a feeling of worthlessness in herself. In various parts of her journal entries, some of which had been set out above, she wrote that it seemed to her that she could do nothing right by her employer. Dr Kong was of the opinion that such thoughts indicated that the first accused had low self-esteem, and he also formed the view that her actions signified feelings of inappropriate guilt.

Causes of depression in the first accused

15 In his report of 14 February 2005, Dr Kong stated that in his view the verbal and physical abuse by V was the likely cause of the depression of the first accused. I should reiterate, at this point, that there was insufficient evidence of any serious abuse by the standards of a normal, hardy person. The issue which was central to the defence was whether the mind of the first accused was abnormal in the sense of it being stricken by depression, so that she perceived V's behaviour towards her as abusive. Dr Kong referred to the $300 as the notable trigger. The proper name of the psychiatric ailment that the defence experts applied was "reactive depression" or, in what is regarded as more modern parlance, "adjustment disorder" of which depression caused by stress is one. The experts, in particular, Dr Ung, the expert called on behalf of the second accused, but much consulted, as it were, by Mr Yim for the benefit of the first accused, cited loneliness, homesickness, and other matters such as poor income, as stress factors. In this regard, V's treatment of the first accused became a matter of some relevance. The evidence from the first accused was that V constantly scolded her, sometimes for reasons that were not apparent to her. She was called names (like "stupid", "*bodoh*", "*anjing*", and "*babi*" – the latter two meant "dog" and "pig" used in a derogatory sense by V). The first accused testified that V had hit her hard on the head with her knuckles and also once with a television remote control. Mr Yim also referred to those six months of employment in which the first accused received only $10 (or $20 – she was paid $10 by V's sister whenever she did work for her in her flat) a month after paying her monthly loan instalment, and her evidence that V would fine her $10 for mistakes made by her. Counsel submitted that these financial punishments magnified the trauma of abuse. The first accused maintained that V took away the $300 that she had collected as *ang pow* money during the Chinese New Year in January 2004. She said that V said to her in a gentle voice that they should count the money together. After they counted the money, she took away the $300, saying that she was borrowing it and would return the money when she came back from work, but she never did return the money. Finally, the first accused was troubled by having constantly to lie to V's male friend, KT, that she had taken the bus to work when she actually took a lift from H. Work-wise, the first accused testified that she started her day at 5.30am, and sometimes, when V played mahjong, she did not get to bed until 2.00am or 3.00am the next day. The evidence from the accused and some prosecution witnesses was that V indulged in gambling, sometimes through mahjong, and sometimes in casinos on board cruise ships. The extent of that indulgence is not clear, and in my view, was not of much relevance.

Rebuttal by the Prosecution

16 The DPP submitted that there was no evidence to support Dr Kong's professional conclusions. In addition to the indicators of a depressive disorder, prosecution counsel also argued that one of the main reasons or motives for killing V, namely, to recover the $300 she took from the first accused, was not true because the first accused did not mention it to the second accused until they had been arrested. She did not talk about the $300 in her statements to the police, including her cautioned statement on 2 March 2004. She mentioned it for the first time in her statement to the police of 10 March 2004. Her cautioned statement read as follows:

> I accept the charge as I have caused Madam's death. Whatever sentence is to be imposed on me I will accept. The things which I could not accept, why madam have to hit me everyday. She could have advised me if I make mistake but she preferred to hit. I have accepted working at two houses as madam paid me extra income. Madam then asked me to work at another home belonging to [H], although [H] has his own maid. Madam also gave me a specific time to complete the work and I have to rush from home to home. I felt pressurised and stressful. Last night, I felt hurt because Madam hit me with the TV remote control because I was late for five minutes in cutting some fruits. I was then busy cleaning the kitchen. I am also not happy because Madam did not trust me. Last night, I was also scolded for not cleaning the shoe rack properly and she wanted to clean it again. I did it and caused madam's death as I was stressful and felt tension.

In respect of the symptoms that Dr Kong found as indicating a depressive disorder, the DPP submitted that there were no such symptoms. Various arguments were raised in support of this submission. The first argument was that Dr Kong only interviewed the first accused nine months after the event. Secondly, when Dr Kenneth Koh interviewed the first accused (with the assistance of an interpreter) on 31 March and 7 April 2004, he did not detect any such symptoms. Thirdly, it was argued that Dr Kong's evidence should be rejected because it was self-contradictory. Fourthly, it was contended that Dr Kong was not an objective witness. The fifth argument was that even if the first accused had an abnormality of mind, it did not affect her mental responsibility. The DPP submitted that there was no evidence suggesting that the first accused "suffered any impairment in her social and occupational functioning". Finally, the DPP submitted that the first accused was not a credible witness in that she had given various inconsistent statements. The DPP also submitted that the first accused had falsely claimed some of the entries in one of the diaries as her own entries. Those entries were the entries of V's previous maid whose diary it was that the first accused took over and continued with her own entries.

The second accused

The second accused's case

17 Two experts testified in the defence of the second accused. The first was Dr Clare Ong Kwee Hiong, a consultant psychologist. She had formerly worked as a senior Educational Psychologist with the Ministry of Education's Psychological Guidance Department. Dr Ong examined the second accused, and administered two tests on her on 31 March 2005. The first was the "Test of Non-verbal Intelligence", commonly referred to by psychologists as the "TONI-3" test, and the second was the Stanford-Binet Intelligence Scales, fifth edition, commonly referred to as "SB-5". The second accused was graded at the low end of average in the TONI-3 test, and below average in the SB-5 test. When questioned on the discrepancy, Dr Ong explained that the latter was the more comprehensive and exacting test whereas the former was a basic one that tested only non-verbal skills. Dr Ong elaborated on the implications of the grading scores in her testimony in court. She stated that the second accused lacked the ability to think logically and had difficulty understanding the co-relations

between given matters and actions.

18 The second expert was Dr Ung Ean Khean, a consultant psychiatrist. Dr Ung graduated with an MBBS degree in 1987, and became a Member of the Royal College of Psychiatrists of London in 1992 and a Fellow of the Academy of Medicine in 1999. He examined the second accused (with the assistance of an interpreter) on 4 February 2005 and 2 April 2005. Dr Ung formed the opinion that:

> At the time of the offence, the [second] accused was suffering from a mental disorder – a depressive episode. This had developed over months of enduring chronic traumatic stress characterized by scolding, slapping and denigrating remarks/insults. Depressive disorder constitutes a mental disorder which will have significantly affected the judgment and responsibility of the accused.

Dr Ung's opinion was formed largely on his interviews with the second accused. The substance of those interviews were largely repeated and extracted in her evidence in court. The narrated history of her background and employment in H's flat is thus relevant not only for the psychiatrists' diagnoses, but it also provides the context in which the diagnoses can be considered by the court.

19 The parents of the second accused are farmers in East Timor, Java, and she is their only child. She came to Singapore to work for the first time at the age of 15, after falsely declaring herself to be older. Dr Ung noted that she had no past forensic or criminal history, and no history of aggressiveness or violence. She was given a salary of $230 a month for working at H's flat, and like the first accused, she had to repay a loan by seven monthly instalments of $220 a month. H lived with his mother and his two sons, one of them (the older one) testified for the Prosecution. The case for the second accused was that she was scolded by H's mother almost daily and often called "*bodoh*" (meaning stupid), and "*babi*" (meaning pig). The second accused said that she had also been called "*anjing*" (meaning dog) and "*pelacur*" (meaning prostitute or slut). The second accused testified that H's mother also used her fingers to push the second accused's head. In addition, the second accused said that H's younger son often hit her, and V herself scolded her constantly. The second accused testified that she was required to work in V's flat about two or three times a month during weekends. She said that V had fined her a few times, about $2 or $3 each time, for mistakes. Further, V hit her on the head with her (V's) hand. The second accused recalled about five instances when she was so hit. They took place in January and February 2004. The second accused also worked about two to four times for H's sister, cleaning her flat. She rose each morning at 6.00am and retired to bed about 11.00pm. The first accused appeared to be only person whom she (the second accused) regarded as a friend and elder sister.

20 I shall now revert to Dr Ung's opinion about the second accused's mental state. In his own words, he stated that:

> The accused presents as a highly vulnerable individual undergoing chronic severe stress. Contributory stressors include (1) starting work, (2) her relative inability to cope with many of the work tasks at hand, (3) moving to and having to adapt to a new country and society with the loss of her usual support system – her parents, (4) living in a harsh environment with repeated scolding, beatings and financial punishments, (5) having a huge family debt hanging over her and her family (due to costs incurred in coming to Singapore to work as a maid). Her vulnerability stems from (1) her slow intellect/low ability (she was a slow learner …), (2) her passive, introverted personality and (3) her relative lack of coping/stress-relieving strategies.

Dr Ung found that the second accused had features of a depressive disorder such as a depressed mood, weight loss, fatigue, difficulty in thinking and concentrating, and also feelings of worthlessness,

all of which were present in the few months prior to the offence. Dr Ung was of the opinion that several factors led to her participation in the crime. These, he said, were the influence of the first accused over her, and her own empathy with the condition of the first accused. He said that the second accused's experience of chronic traumatic stress and victimisation acted as an aggravating factor.

Rebuttal by the Prosecution

21 The Prosecution relied on the expert evidence of Dr Cai Yiming, who is a senior consultant psychiatrist, and head of the Department of Child And Adolescent Psychiatry in the Institute of Mental Health and Woodbridge Hospital. He examined the second accused on 7 and 8 April 2004 for about an hour on each of those days. He interviewed the second accused in English, without the assistance of an interpreter. He testified that he could understand her. In his report of 12 April 2004 he stated his opinion that

> Mental examination findings and psychiatric observation chart did not indicate she had any mental disorder or mental retardation. She was spontaneous and forthcoming in her answers. And she could give a consistent account of the alleged offence. She was capable of knowing the nature and consequences of what she did was wrong and contrary to the law.
>
> From all facts available to me and my clinical findings, I am of the opinion that at the time of the alleged offence, she was not of unsound mind.
>
> She is fit to testify in court and to plead.

22 In addition to the above report, Dr Cai was asked to comment on Dr Ung's report and opinion. Accordingly, he prepared another report dated 16 March 2005. In this second report, Dr Cai expressed the view that:

> The history and symptoms elicited by Dr Ung is mainly a retrospective account of what [the second accused] said. It is not supported by facts or corroborated by evidence.

He found that despite her assertions of punishment and victimisation, the second accused "was not found to be lacking in her ability to work to the extent that she should be sent back to the maid agency". Dr Cai also commented that what the second accused told Dr Ung about her academic history was not consistent with what she told him (Dr Cai), and pointed out that the second accused had told Dr Ung that she was a poor student who struggled academically, but had told Dr Cai that she was placed ninth in a class of 24 students. He also said that the behaviour of the second accused just before and after the killing was not consistent with that of a person who had a depressive disorder. Dr Cai was of the view that a person with a depressive disorder would be looking for sympathy instead of showering sympathy on others – in this case, on the first accused. From her narrative of how she made the decision and carried out the crime, Dr Cai formed the view that "she was very much in control of herself". Two more passages from the second report of Dr Cai are relevant. In the fourth last paragraph he stated that:

> [The second accused] had no difficulty or impairment in thinking and her carrying out of the purpose of her action. Although she might be a follower in the killing, she showed no loss of judgment and responsibility for what she did. It cannot be said that she had a depressive disorder at all.

And in the penultimate paragraph he stated that the "[p]sychiatric observation chart on her behavior

as recorded by the nurses in the Changi Women's Prison during her period of remand and my examination findings, shortly after the alleged murder, did not indicate that she had any evidence of a mental disorder". Dr Cai's concluding remark was that he did not agree that the second accused suffered from a depressive episode which could have significantly affected her judgment.

Evaluation of psychiatric evidence

23 The opposing counsel and their experts were all very learned and experienced, each side believing conscientiously and sincerely the theory it advanced. One believed that the accused persons were two greedy young women who killed for money and revenge. The other believed that each of the accused person's sense of judgment and responsibility had been perverted by an illness of the mind. Whether each of the accused acted under a diminished responsibility is a question of mixed fact and law. It is also a question that relies on that branch of medical science least amenable to precise and objective diagnosis. Preferring one opinion to the other is thus no criticism of the competence or fairness of the experts. Indeed, I am indebted to all of them for their thorough expositions of depressive disorders and their opinions in respect of the two accused persons, in spite of some difficulties not of their making. Firstly, the experts were not able to spend as much time, as I think they would have liked, for a clearer understanding of the accused persons' mental condition. Each of them saw the accused persons for about two hours each. Secondly, the doctor-patient relationship could not be established for want of a common language. It would naturally be difficult for thought processes to be articulated clearly without a common language – not impossible – but difficult. The difficulty in this respect was most apparent in the case of Dr Cai although he appeared to me a very learned and experienced psychiatrist. Thirdly, the accused persons might not have been examined under ideal circumstances – circumstances and surroundings that the doctors themselves would have preferred. In situations like the present, the unfamiliarity of the ward and surrounding circumstances could have been an inhibiting factor. The problems that the doctors had to contend with were largely not of their doing. On the contrary, they produced admirable theories of their respective positions in spite of those problems.

24 The aetiology of the abnormality of mind, that is, the cause of the abnormality, would of course, be dependent on medical evidence. Where the court is confronted by a conflict of opinion of such learned professionals, it will have to turn to its own judgment in choosing which it is inclined to favour. In coming to that decision, it will be helpful, therefore, to bear in mind the following passage from the English Court of Appeal in *Regina v Byrne* [1960] 2 QB 396 at 403–404.

> Whether the accused was at the time of the killing suffering from any "abnormality of mind"… is a question for the jury. On this question medical evidence is no doubt of importance, but the jury are entitled to take into consideration all the evidence, including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence if there is other material before them which, in their good judgment, conflicts with it and outweighs it.

The first accused

25 The evidence adduced showed a great deal of the thoughts that brought about the onset of depression in the first accused. But V probably would not have known that the first accused was being troubled by such thoughts. Some of those thoughts were probably endogenous in nature, such as loneliness and fear, while others were caused by external stimuli such as scoldings, financial worry, or fatigue. A little more needs to be said about depressive disorders. The *Shorter Oxford Textbook of Psychiatry* (Oxford University Press, 4th Ed, 2001) described the condition in these terms at p 903:

> *Depressive disorder* is sometimes associated with shoplifting … Much more seriously, severe

depressive disorder may lead to *homicide*. When this happens, the depressed person has usually experienced delusions, for example, that the world is too dreadful a place for him and his family to live in; he then kills his spouse or children to spare them from the horrors of the world. The killer often commits suicide afterwards. A mother suffering from post-partum disorder may sometimes kill her newborn child or her older children. Rarely, a person with severe depressive disorder may commit homicide because of a persecutory belief, for example, that the victim is conspiring against the patient. Occasionally, ideas of guilt and unworthiness lead depressed patients to confess to crimes that they did not commit.

Depression is thus a disorder that manifests itself in a great diversity of ways and in varying degrees of severity. Its effect on the mind of the person afflicted seems also to depend on the personality of each individual patient. From the evidence of the experts, it is an important feature of treatment that the patient is alleviated from his or her depressed mood; but that may be easier said than done. Unless depressed thoughts are replaced by happier, more serene ones, they remain locked in the mind, as it were, like inmates in a mobile prison going wherever the patient goes. Medication helps, but prescription presupposes diagnosis. So, although the first accused sometimes worked in H's flat and sometimes in V's sister's flat, and would have had opportunities to be distracted on account of her physical mobility, it was not the physical escape from her place of work that she most needed, but an escape hatch for her depressed thoughts to disperse. She did not have it. It was difficult for someone else (such as her employer) to help her in this regard unless that person was able to recognise the symptoms of depression. That is not always easy, even if that person is a close family member, because it is so often difficult to mark out the difference between transient unhappiness and pathological depression. Just like darkness does not fall all at once upon the evening sky, a depressive disorder does not descend on the mind in an instant.

26 V was unaware of the clues written in the diary of the first accused that indicated the growing distress of the journal writer. I cannot be sure that even if she had sight of those diaries, she would have understood the significance of their entries; but Dr Kenneth Koh certainly would have. However, Dr Koh did not know about the diaries until much later when his report had already been written. Dr Koh's report of 12 April 2004 was written after his two interviews with the first accused. The interviews took a total of about two hours. It might not appear to be a very long time, especially compared to the time of almost 18 hours the first accused spent in the witness box at trial; but even two hours might be adequate if the interviewer had a specific target to probe. In this case, it appeared that Dr Koh was more concerned with ascertaining whether the first accused was mentally capable and fit to plead, and he was looking out for signs of a major mental illness such as might disqualify the first accused as a competent witness, and therefore incapable of taking a plea when charged in court. Dr Koh did not seem to have been looking specifically for signs of a depressive disorder, although he took the position that depressive illness was "bread and butter", implying that if it was there, it would not have escaped his attention. Whether indications appeared sufficiently to alert him at the time depended on many factors, including the quality of the questions asked, the degree of comprehension by the accused, and where interpreters were relied on, the competence of the interpreters and the quality of their interpretation. Dr Koh's view that the first accused did not suffer from "any mental illness" must, therefore, be evaluated in the context described. Depressive disorders might not be readily detectable, and some symptoms might be masked or misinterpreted.

27 The experts were all agreed that there is a point beyond which depression becomes a mental illness, and that dysphoria is an indication of the illness. They differed, however, in their views as to whether the depressive mood that the first accused said she had, were evidence of a depressive disorder. It was thus not important whether it was homesickness or the scolding by her employer, or some other matter that could have created the depressed mood of the first accused. Individuals would react in different ways to the kind of experiences that the first accused went through. Some

people are likely to shrug them off with little mental distress while others may suffer a deep and prolonged period of despair. In answering the question whether the first accused was affected in the latter way, we ought to bear in mind that stress vulnerability is often indiscernible until the person concerned is put to the test.

28 In regard to the unhappiness of the first accused after she started work with V, I accept the testimony of the first accused as well as that of the second accused who corroborated her not only in court but also in her statements to the police that the first accused had told her about her unhappiness, due mainly to the way she was treated by V. The most significant and reliable evidence on the mood and state of mind of the first accused, however, is revealed in the journals that she maintained during the six months of her employment under V. I have set out some of those entries above, and do not think it necessary to set out more of the same except for the two last entries in February because they represent the last outward expression of her thoughts and feelings just a few weeks before the crime. The penultimate entry, as translated, reads:

> Oh … God I am feeling and suffering a very heavy burden.
>
> And why You make my life journey to be in a foreign country.
>
> A country I do not know at all. A country that is too foreign to me.
>
> Is this the path that I have to take as a maid.
>
> This is the fate of TKI (Indonesian worker) who is constantly being verbally abused.
>
> Every day can only lament and cry silently.
>
> God, help me please, lighten the burden in my life.
>
> So that I can step forward to reach out to my future.

The final entry reads:

> In going through life that's full of spikes. Feeling pain and fear.
>
> Many trials and tribulations to hinder but I shall never be afraid to face.
>
> Inside me, I said:
>
> "Go, struggle on, till you succeed in achieving something that you always desire.
>
> Don't you ever become disheartened? Carry on straight towards it and you may get it.
>
> Continue struggling till the last drop of blood".
>
> Oh God can I afford to achieve all that. I beg for your blessing and allow me to achieve my desire.
>
> The unfortunate Indonesian worker
>
> Accept your fate

And what has been predestined in

Your life.

The contemporary journal entries were the unpublished plea for help that went unheeded because no one knew about them. On the balance, testing Dr Kong's hypothesis against that of Dr Koh's with the other evidence before me, I am inclined to accept that at the material time, the first accused was suffering from a psychiatric disorder of a depressive nature, sometimes referred to as a depressive disorder or, more generally, as a mood disorder.

29 The next major issue is whether the mental responsibility of the first accused was substantially impaired by reason of the abnormality of mind. Before I move to that point, I should express my opinion on the psychiatric evidence and the experts who gave them. I have no doubt that both Dr Kong and Dr Koh were eminently qualified as experts and both appeared sound and competent, fair, and neutral, although they could have benefited from spending more time with the first accused. Examining a young patient, communicating through a different language, in unfamiliar surroundings (that might even be perceived by her as hostile), would probably require more patience and effort than the two hours of interview afforded. Nonetheless, her answers in court and her contemporary recorded grief were evidence that supported Dr Kong's diagnosis. Dr Koh was also handicapped by the fact that the first accused person's journals were not made available to him when he interviewed her. Although Dr Ung testified on behalf of the second accused person, he, neutrally and dispassionately, allowed his expertise to be tested by Mr Yim and Mr Amarjit Singh, and consequently I was greatly assisted by his evidence on the circumstances of the first accused.

30 Reverting to the question whether there was a substantial impairment of the first accused person's mental responsibility, I would begin with the reminder that the term "substantially impairs his mental responsibility" is couched in "popular language, (not that of the M'Naughten Rules)" as the Court of Criminal Appeal in *Regina v Byrne* ([24] *supra*) at 404 observed. Following suit, Ashworth J, the trial judge in *Regina v Lloyd* [1967] 1 QB 175 at 178 summed up his directions to the jury as follows:

> I am not going to try to find a parallel for the word 'substantial.' You are the judges, but your own common sense will tell you what it means. This far I will go. Substantial does not mean total, that is to say, the mental responsibility need not be totally impaired, so to speak, destroyed altogether. At the other end of the scale substantial does not mean trivial or minimal. It is something in between and Parliament has left it to you and other juries to say on the evidence, was the mental responsibility impaired, and, if so, was it substantially impaired?

That summation was fully endorsed by the Court of Criminal Appeal in the same case, at 181, and I think that it serves as a useful working guide.

31 It is probably fair to say that not every depressed person will kill; and not all who do kill, kill other people. Sometimes they kill themselves. The experts drew my attention to examples of famous people who have so killed themselves. We only know of the famous ones; the others merely become statistics. The Prosecution's case was heavily, but not exclusively, dependent on the evidence that the two accused had planned the crime, and especially that the first accused was able to plan a fake robbery to throw the police off the trail. The DPP also emphasised the evidence that the first accused forged V's signature on her cheques until she was satisfied that it looked passable. That, counsel for the Prosecution submitted, was not evidence of a disordered mind, but evidence of a coldly rational one. The planning and rational behaviour during and after the homicide obviously portray an ostensibly normal mind. But that aspect required a much deeper examination of the evidence than many other

aspects of this case such as whether the first accused was physically and verbally abused – the evidence concerning those aspects was more straightforward. It was not a straightforward question as to whether a person who could plan and carry out a plan for robbery and even fake a robbery to conceal a homicide could not be said to be suffering from diminished responsibility. Neither was it a question whether a person who was suffering from a depressive disorder could have made and carried out such plans. These questions must be addressed specifically to the evidence.

32 Dr Kong and Dr Ung expressed the opinion that persons suffering from a depressive illness did not necessarily lose their capacity to think nor would they necessarily lose the ability to carry out complex tasks. The doctors pointed out that suicides had shown a remarkable ability to plan the last days or moments of their lives. I am much more inclined to accept that opinion. The medical evidence that was presented to me did not indicate that a person with depressive disorder would be incapable of thinking or functioning normally. A person with a depressive disorder does not have to be a person who is stark raving mad – none of the experts would disagree with that. The disorder affects patients differently, and with varying consequences. Nonetheless, the evidence of planning cannot be lightly dismissed, and that must feature in the consideration of every aspect of the defence of diminished responsibility – especially when the burden of proving that defence rests with the accused – and that evidence continues to feature until every part of the case has been considered, and the question last remaining is whether the accused suffered from a diminished responsibility in spite of her apparent cogent and rational planning of the homicide. In this case, I am of the view that loneliness, and the young age of the first accused, as well as the unfamiliar place and nature of work, troubled her mind, and magnified words and actions by other people such as her employer, to unrealistic proportions. And that ultimately caused her to form the decision to kill. As I understand the illness from the experts, including the prosecution experts, a depressive disorder is a mood disorder that affects the mood, and not the intellect or the motor skills of the afflicted person. It was the disaffected mood that drew the accused to a course of action that she would not otherwise have followed. I am persuaded that, due to the illness, the individuality, and circumstances of the accused, she was unable to distinguish or appreciate irrational urges (such as killing) from more rational ones (such as complaining to the maid agency). Some parts of her rational self were, in my view, distorted by the depressive disorder.

33 In the case of the first accused, there was no rescue because a help-line could only have been extended to her if it was known that she was suffering from depression. It was apparent from the evidence that V did not notice the illness that was developing in the first accused. She had no friends in Singapore other than the second accused. There was evidence of what appeared to be a failed attempt to make friends with another maid called Indah. She was left with only the younger, equally depressed and helpless second accused, for comfort. Communication, so important a channel for a person to rationalise her thoughts, was thus lost to her, or perhaps more accurately, perceived by her as being lost. Her problems were compounded by financial worry. She had not seen much money in the six months that she toiled, except for the *ang pow* collection of $300 that she said V had taken away from her. We do not have V's version of this story, but I can accept that V might have taken the money, although we do not know the reason. It is possible that the first accused, being in the state that she was in, imagined the worst. It appeared that her mind, constantly disturbed by loneliness and despair, became fragile and overly sensitive to the comments and physical contact by V. From the evidence of the accused persons themselves, I am satisfied that V did not cause physical violence of any note on either accused; but the few instances of pushing or tapping the first accused on the head proved too sensitive for that fragile mind to bear. The evidence of her thought processes in the months preceding the offence showed that any introspection that she might have, revolved around negative thoughts. Thus, taking into account all the circumstances, I am of the view that the first accused suffered from an abnormality of mind, which substantially impaired her mental responsibility at the time of the crime.

34 I do not think that the first accused was not a credible witness in the sense of regarding her as being an untruthful witness on the witness stand – that is not the same thing as accepting that her statements to the police and elsewhere were entirely truthful and accurate. I am of the view that such discrepancies as there were, were not material to her defence. And some of the lies allegedly told by her had not been sufficiently proved. For example, the Prosecution's contention that a part of the diary of V's previous maid, Umi, was not written by the first accused, but by Umi, was not clearly proved one way or the other. In this instance, however, even if that part were not written by the first accused, I would not conclude that her claim was falsely and deliberately made. I am of the view that if it was Umi's entry, the first accused erroneously claimed it as her own, as opposed to her falsely claiming it as part of planned deception. In ordinary circumstances, it would be unusual, but not impossible, for someone to mistake another person's handwriting and words for her own. But the circumstances here were not ordinary. The two handwritings were similar in many ways and required close scrutiny before some differences could be noticed. The subject was something the first accused could well have written. In any event, it served little purpose for the first accused to claim that part as her writing. That part of the diary entry was admitted to show the crowded programme of daily chores that V had planned for the first accused. Even if that entry was Umi's, it nevertheless indicated that V did indeed have a busy work schedule for her maids. There was no dispute that the material parts of all the other journal entries were written by the first accused. It was through the evaluation of her evidence in court and all that she had said in her diaries and statements to the police, that I form the view that if the disputed handwriting was Umi's, then the first accused had erroneously, and without guile, believed it to be her own.

The second accused

35 Like the first accused person, the second accused was also not adjusting well to the changes she had to meet. She was still 15 years old when the offence was committed. One of the contentious issues concerning her defence was the question of her intellectual capacity. The preponderance of evidence showed that she was not a good student. Her school reports showed that she was ranked near the bottom of her class. The intelligence tests conducted by Dr Clare Ong also indicated that the second accused was below average, and placed in about the 21st percentile. Dr Ong further clarified her evidence by stating that even students who were between the 25th and 30th percentile would struggle in school. The school reports and Dr Ong's tests were useful indicators, but such evidence ought to be received with circumspection and allowance for variation and inaccuracy must be given. I am of the view, however, that the evidence in question was helpful as corroboration of the impression the second accused gave as a witness during the eight hours or so of testimony and cross-examination in court. I incline towards the view that the second accused was intellectually and psychologically immature. However, she appeared to me to be forthright in her testimony in court. Given her disposition, as I perceived it, I would accept Dr Ung's description of her as someone likely to be "led along".

36 The second accused had also complained of being scolded frequently by H's mother, and being called derogatory names. She felt worthless and, according to Dr Ung, exhibited features of a depressive disorder such as depressed mood, crying, weight loss, fatigue, and poor concentration a few months prior to the homicide. In the course of his interview, the second accused told Dr Ung that H's mother who was critical of her work had often scolded her. I accept that consequently, she lost confidence in herself and lost her motivation to work, and that, in turn, aggravated her depressed mood. Her statements to the police corroborated her account of her relationship with H's mother, but there was no record of that account in Dr Cai's notes. After listening to her evidence and that of Dr Cai, it appeared to me that the second accused was less open to Dr Cai than she was to Dr Ung. Why that was so is not entirely clear, but I am satisfied that it was not due to any evasiveness or cunning on her part, and could just have been due to the circumstances of time and mood. The

testimony of the second accused in court, in terms of what she said and the manner in which she gave her answers, inclined me to accept the evidence of Dr Ung. I accept the evidence that the two accused confided in each other, and that such a confiding relationship had its good and bad effects. It was good that they had a sympathetic ear to their respective problems, real and perceived. It was not a good thing that they fed off each other's woes because it facilitated the ready empathy one had for the other, culminating in the decision to kill V.

37 The second accused was unwell on two occasions during the trial. On the second occasion she was certified unfit for trial for four days with the diagnosis of "Stress related hysterical psychosis" by the prison psychiatrist whose fuller note as well as the medical certificate were admitted in evidence. It was entirely possible that the hysterical psychosis could be attributed to the trial and not to events prior to her arrest. I am inclined to accept that the recent episode reasonably indicated a propensity on the part of the second accused to mental disorders due to stress. On the whole of the evidence, I am satisfied that the second accused found herself incapable of coping with the change in environment between her home and her working place, and that failure to cope, in turn, became an increasing stress on her mental stability. Thus, on the balance, I find that the second accused was suffering from an abnormality of mind at the time of the offence. In her own circumstances, the second accused's ability to rationalise or will herself out of the crime was impaired by her youth, sedate personality, low intellectual capacity, and depressive illness. I am therefore satisfied that this abnormality of mind had substantially impaired her mental responsibility at the time of the offence.

Verdict

38 The Prosecution has always to prove the guilt of the accused beyond reasonable doubt, but when a special defence such as that under Exception 7 to s 300 of the Penal Code is relied upon by an accused, he or she is obliged by law to prove that defence on a balance of probabilities. In the course of the fact-finding process, one would inevitably find some assertions to be possibly, and others probably, true; and conversely, some possibly untrue, and others probably untrue. The point at which a possibility becomes a probability is often imperceptible. Thus, in reaching a decision on a major issue such as the Exception 7 defence, or the wider one as to the overall burden of proof of guilt, it behoved the court to examine the possibilities and probabilities of individual facts congealed together, and, concurrently, envisage what kind of picture that mass had produced. On these grounds, and by reason of my findings in respect of the defence under Exception 7, I find both accused persons not guilty of murder but guilty of the offence of culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code, and I hereby convict them accordingly. I shall now hear counsel in respect of mitigation, and the response from the DPP, if any.

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