Public Prosecutor *v* Sutherson, Sujay Solomon
[2015] SGHC 292

Case Number : Criminal Case No 31 of 2015

Decision Date : 06 November 2015

Tribunal/Court : High Court

Coram : Hoo Sheau Peng JC

Counsel Name(s) : Kumaresan Gohulabalan, Ruth Teng and Elton Tan (Attorney-General's Chambers) for the Prosecution; The accused in person.

Parties : Public Prosecutor — Sutherson, Sujay Solomon

Criminal Law – Offences – Culpable Homicide

Criminal Law – General Exceptions – Private Defence

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders

6 November 2015

Hoo Sheau Peng JC:

Introduction

1 The accused, Sujay Solomon Sutherson, who was unrepresented, claimed trial to the following charge:

> That you … are charged that you, on 27 May 2012, sometime between 6.30 p.m. to 10.45 p.m., at Blk 248 Bukit Batok East Ave 5, #02-66, Singapore, did commit culpable homicide not amounting to murder, to wit, by repeatedly stabbing one Mallika Jesudasan on her neck with multiple knives, which act was done with the intention of causing such bodily injury as was likely to cause the death of the said Mallika Jesudasan, and you have thereby committed an offence punishable under section 304(a) of the Penal Code, Chapter 224 (2008 Revised Edition).

2 At the conclusion of the trial, I convicted the accused and sentenced him to a term of life imprisonment which was ordered to commence from 29 May 2012, the date he was first placed on remand. He has filed an appeal against the sentence imposed, and I provide my detailed reasons.

The Prosecution's case

3 In support of their case, the Prosecution led three strands of evidence. The first concerned the circumstances leading to the discovery of the body. The second concerned the statements made by the accused. The third pertained to the scientific and medical evidence, including evidence that at the material time, the accused was suffering from paranoid schizophrenia. I will set out each in turn.

Circumstances leading to the discovery of the body

4 The deceased, Mallika Jesudasan, was the mother of the accused. She was last seen alive at home in their flat ("the flat") by her daughter, Sheena Sutherson ("Sheena"), before Sheena left the

flat to meet a friend at about 6.30pm on 27 May 2012. At about 10.35pm, Sunil Sutherson ("Sunil"), the deceased's second son, returned home to find that the door had been latched from the inside. He used his mobile phone to call the house phone. When the accused answered the call, Sunil asked him to unlock the door. The accused replied that he would do so after he had cleaned the house. Sunil thought this strange as the accused never did any house-cleaning. After a few minutes, the accused unlocked the door.

5 When Sunil entered the flat, the accused retreated to the bedroom which he shared with Sunil and locked the door. Sunil could not find the deceased at home. When he called her mobile phone, it was switched off. Then, Sunil called Sheena to inform her of the situation and asked her to rush home. Sheena returned home several minutes later. When Sunil and Sheena searched the home, they noticed that several things were amiss. First, a bottle of vodka, a stainless steel knife, and a stove lighter were placed on the table in the kitchen when they were not normally stored there. Second, they noticed that there were scraps of burnt paper and fabric in the room shared by Sheena and the deceased. Lastly, they noticed that the floor was very sticky and it seemed like many pieces of furniture had been moved from their original positions.

6 A while later, Daniel Jesudason ("Daniel"), the deceased's brother, arrived. He had made his way to the flat after learning that the deceased was missing. Sunil and Sheena informed him of their observations. As they were unable to find the deceased, Daniel, Sunil, and Sheena left the flat and walked around the neighbourhood to continue the search but the search proved futile. About ten minutes later, they returned to the flat.

7 By then, the items on the kitchen table were no longer there and the burnt material on the floor had been cleaned up. Sunil walked into the bedroom he shared with the accused. He noticed that several boxes which were usually stored underneath the accused's bed were out of place. He asked Daniel to take a closer look. As Daniel was about to pull a suitcase from underneath the accused's bed, the accused rushed in and attempted to stop him. Daniel persisted in pulling the suitcase out, and he saw a pair of legs.

8 Daniel cried out in shock and informed Sunil and Sheena that the deceased was under the bed. He then shouted for Sunil to call the police. The accused rushed out of his bedroom and latched the main door of the flat. He then confronted Sunil and demanded that he not call the police. Seeing this, Daniel grabbed hold of the accused in an attempt to stop him from getting close to Sunil and a scuffle ensued.

9 Meanwhile, Sunil managed to get through to the emergency operator and shouted his address before putting down his mobile phone in an attempt to placate the accused. The accused demanded that Sunil and Sheena hand their mobile phones to him, which they did. Around then, Daniel's wife called him on his mobile phone. Daniel answered, hurriedly informing her that the deceased had been killed and requesting her to call the police immediately. The accused then approached Daniel and demanded that he surrender his mobile phone. Seeing that the accused was occupied, Sunil took this opportunity to unlatch the main door and run out of the flat to get help. The accused tried to stop him but he was intercepted by Daniel. In the scuffle which followed, Daniel sustained a cut on his left eyebrow.

10 Soon after, the police arrived. One of the police officers, Senior Staff Sergeant Mohamed Jasmani Bin Mohamed Hassan ("SSSGT Jasmani"), questioned the accused, who stated that he stabbed the deceased after a quarrel. Following this, SSSGT Jasmani entered the accused's room whereupon he noticed the deceased's leg protruding from beneath the bed. When he lifted the mattress slightly, he caught a glimpse of the deceased's body, which lay on the floor wrapped in a

blood-soaked blanket. Soon after, Senior Station Inspector Riduan Bin Hamid ("SSI Riduan") arrived at the flat. Together, they questioned the accused. The accused was initially reticent but eventually informed them that he stabbed the deceased after an altercation. Upon hearing this, they placed the accused under arrest.

Statements of the accused

11 Next, I go to the statements given by the accused to the police. Apart from the oral statements made immediately prior to his arrest to SSSGT Jasmani and SSI Riduan set out at [10] above, there were five written statements recorded under the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC"). In chronological order, they were:

(a) A statement recorded under s 22 of the CPC on 28 May 2012 from 4.25am to 5.05am by Deputy Superintendent Foo Jit Choon.

(b) A statement recorded under s 23 of the CPC on 28 May 2012 from 12.15pm to 2.00pm ("the cautioned statement"). On this occasion, the accused elected to write down his account of the events himself. He did so in the presence of ASP Tan Lee Chye Raymond after being administered the statutory warning.

(c) A statement recorded under s 22 of the CPC on 30 May 2012 from 10.10am to 12.25pm ("the second long statement") by the investigation officer, ASP Tan Lian Heng ("IO Tan").

(d) A statement recorded under s 22 of the CPC on 30 May 2012 from 4.50pm to 6.40pm ("the third long statement") by IO Tan.

(e) A statement recorded under s 22 of the CPC on 31 May 2012 from 10.35am to 12.27pm ("the fourth long statement") by IO Tan.

12 The accused did not challenge the admissibility of the five written statements, and they were duly admitted into evidence. The fourth long statement only related to details of the accused's personal background so I shall say no more of it. As for the other four statements, the contents were largely consistent, albeit with minor discrepancies as to the precise sequence of events and the length of time that transpired between them. In essence, the accused narrated that he quarrelled with the deceased and that, in the course of the altercation, he stabbed the deceased in the neck with knives.

13 The cautioned statement and the second long statement provided the most detailed accounts of the events. In them, the accused described that the deceased had given him some money to purchase food for the two of them. After returning home with the food, he changed out before sitting down to consume his food in the living room while the deceased consumed her food in her bedroom. After that, the deceased came out of her bedroom and asked the accused if he had any money for her. He answered in the negative and proceeded to the kitchen to wash his plate. The deceased stood at the door of the kitchen and continued to ask the accused for money. The deceased then turned inexplicably violent. She lunged at him, pulled his hair, scratched his face and tried to pull his shorts off.

14 The accused reacted by picking up a knife with a blue handle from the kitchen counter and stabbed the accused in the neck, leaving the knife embedded in the side of the deceased's neck. The deceased staggered back towards her bedroom and tried to reach for the phone. The accused returned to the kitchen to retrieve a second knife ("a knife with a black handle", as the accused

recounted in the second long statement) which he used to stab the deceased in her throat, causing her to collapse. The accused explained in the third long statement he stabbed her for a second time to "prevent her from calling someone". After this, the deceased's eyes changed. She writhed on the floor for some time and spoke in an incomprehensible language. The accused stared at her body before retrieving a third knife (a "silver butterfly knife") and slit her throat. In the third long statement, he explained that he did so to ensure that he would not get "attacked again". Once again, the accused stared at her body for a period of time before deciding to dispose of the body.

15 The accused wrapped the deceased in bedsheets and blankets, covered her with some old newspapers and doused her in alcohol (from the vodka bottle and a bottle of rice wine) before attempting to set her alight with a stove lighter. However, he only managed to singe parts of the deceased's clothing before the fire died out. The accused then took steps to hide the body. He wrapped the deceased up in more bedsheets and blankets before dragging her from her bedroom to his own where he placed her underneath his bed, rearranging some of the items beneath the bed in order to hide the body from view. He then mopped the floor in an attempt to remove all traces of blood from the flat. While he was in the midst of cleaning, Sunil returned home whereupon the body was found.

Scientific and medical evidence

16 The final strand of evidence adduced pertained to the results of DNA analyses, the autopsy performed on the deceased's body and the psychiatric reports concerning the accused's mental state.

DNA evidence

17 In the course of investigations, a large number of exhibits and swabs were taken from the flat, and sent by the police to the Health Sciences Authority ("HSA") for DNA analysis. Further, the police also collected samples from certain persons, including the accused, for analysis by the HSA so as to generate their DNA profiles. If any of the DNA profiles obtained from the exhibits or swabs were to match a DNA profile of one of the persons, then an inference could be drawn that the person had handled the exhibit in question or was present at the scene.

Admissibility of a report with the accused's DNA profile

18 In this regard, an issue arose regarding the admissibility of a report prepared by one Ms Tang Wai Man, formerly an analyst in the employ of the HSA, who had returned to reside in Hong Kong and was not present for the trial. Ms Tang's report detailed the DNA profile of the accused based on her analysis of a blood sample collected from him. Should the Prosecution intend to rely on the DNA evidence to establish that the accused was present at the scene of the crime and or that he had handled certain exhibits, the report would be important. As Ms Tang was not available as a witness, the report was hearsay evidence and therefore inadmissible.

19 On the second day of the trial, 7 July 2015, the Prosecution indicated that they would be applying to admit the report under s 32(1)(*j*)(iii) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"): *viz*, that it was a statement of relevant facts made by a person outside Singapore whose attendance it would not be practicable to secure. On the same day, they served a written notice to admit documentary hearsay evidence on the accused as required under s 32(4)(*a*) of the EA read with reg 2 of the Criminal Procedure Code (Notice Requirements to Admit Hearsay Evidence) Regulations 2012. While the accused did not clearly object to the admission of the report, he indicated that he would prefer Ms Tang to be present. On 9 July 2015, the Prosecution made an oral application pursuant to s 279 of the CPC for an ancillary hearing to be conducted for the court to determine the admissibility of

the report.

20 In the ancillary hearing, IO Tan testified as follows:

(a) Ms Tang was present at the Committal Hearing on 11 May 2015. At the conclusion of her testimony, she was served a bond to secure her attendance and told of the trial dates. At that time, she was still employed by the HSA and did not give any indication that she would be resigning from her position.

(b) Subsequently, Ms Tang resigned from the HSA, and her last day of service was 14 June 2015. According to the immigration records obtained from the Immigration Checkpoint Authority of Singapore, she left Singapore on 18 June 2015 and, as at 9 July 2015, she had not returned to Singapore.

(c) A few days before the trial commenced on 6 July 2015, IO Tan sent a reminder to Ms Tang to her email address with HSA but received no reply. On the first day of the trial, IO Tan tried to contact Ms Tang on the telephone to request for her attendance in court on 7 July 2015 instead of 9 July 2015 as originally scheduled. He failed to reach her and soon discovered that she had left Singapore.

(d) Through HSA, IO Tan found out Ms Tang's contact details in Hong Kong and managed to speak with Ms Tang over the telephone on 8 July 2015. She informed him that she would not be returning to Singapore in the near future. Citing personal reasons, she also refused to return to Singapore to testify on behalf of the Prosecution even though IO Tan informed her that her travel expenses would be paid for and that she would be given a subsistence allowance. IO Tan later followed up on the telephone conversation with an email reducing the salient points of the discussion in writing and asking Ms Tang if she would confirm that she did not wish to return to Singapore. Ms Tang replied in the affirmative.

21 In *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*"), the Court of Appeal dealt with the admission of hearsay evidence under s 32(1)(*j*) of the EA. At [98], the Court of Appeal explained that s 32(1)(*j*)(iii) sets out two requirements: (a) the witness must be outside of Singapore; and (b) it is not practicable to secure his or her attendance. Based on the evidence of IO Tan, it was clear to me that the former had been satisfied. As for the latter, the Court of Appeal said at [99]:

> On the second requirement, Prof Colin Tapper ("Prof Tapper") in *Cross and Tapper on Evidence* (LexisNexis, 12th Ed, 2010) observed with regard to s 116(2)(c) of the Criminal Justice Act 2003 (c 44) (UK) ("the CJA") (which is *in pari materia* to s 32(1)(*j*)(iii) of the EA) (at p 607) that:
>
> > … [t]he second condition, however, refers not to inability to attend, but to *secure* attendance, and may be satisfied by the recalcitrance of a witness outside the United Kingdom. Reasonable practicality implies assessing the likely effectiveness of taking normal steps to secure the attendance of the witness, and considering in relation to such a judgment the importance of the evidence, the degree of prejudice to the defence if it is admitted, and the expense and inconvenience involved in securing attendance. … [emphasis in original]

22 On the facts, it seemed to me that it was not practicable to secure Ms Tang's attendance. At the close of the committal hearing (which took place only two months before the trial), she had been instructed to be available for the trial. After IO Tan discovered the fact of Ms Tang's departure from

Singapore, he acted with considerable expedition and took reasonable steps to secure her attendance. He managed to get in touch with Ms Tang and requested her return to Singapore to testify. He informed her that the cost of her return would be borne by the State and that she would be given a subsistence allowance for the duration of her stay. Despite these efforts, Ms Tang made it clear that she had no interest in returning to Singapore, communicating this first over the telephone and then in writing (see [20(d)] above). In my view, the requirements of s 32(1)(*j*) of the EA had been satisfied. *Prima facie*, the report was admissible.

23 However, as the Court of Appeal clarified at [103] of *Gimpex*, the fact that a document is admissible under s 32(1) is not the end of the matter. The court still has a residual discretion under s 32(3) to exclude hearsay evidence in the interests of justice even in the absence of an objection from the other party. In applying s 32(3), the issue is whether admissible evidence should be excluded because other countervailing factors outweigh the benefit of having the evidence admitted (see *Gimpex* at [105]). However, the Court of Appeal opined that courts should not normally exercise their discretion to exclude evidence that is admissible under the EA (see *Gimpex* at [109]).

24 There was no doubt that Ms Tang's report would be an important piece of evidence (see [17] and [18] above). When asked about his position regarding the report, the accused did not allege any impropriety in the testing process or in the process of the preparation of the report. He informed me that he only wished to have the report "explained", by which he meant that he wanted general information on how the report ought to be read. To that end, the Prosecution had arranged for another HSA analyst, Ms Joyce Low Hui Koon ("Ms Low"), to testify as to the DNA profiling procedure adopted by the HSA and to explain how such reports are to be read. Given that the reliability of the report was not in issue, and the fact that the accused's concerns would be adequately addressed by having Ms Low testify, I was satisfied that the accused's right to a fair trial would be preserved and did not see any reason to exercise the discretion under s 32(3) to refuse the admission of Ms Tang's report. I should add that during cross-examination, the accused only asked Ms Low general questions about the interpretation of the report and did not allege that there had been any impropriety in Ms Tang's analysis.

Results of the analyses

25 Among the exhibits retrieved from the flat and sent to the HSA for analysis, there were the stove lighter, vodka bottle and the three knives as described earlier. The following is a brief summary of the results of the analyses conducted on the most notable exhibits:

Exhibit (marking)	**DNA found**	**Remarks**
Knife with dark blue handle (P 234)	The deceased	Found by the side of the deceased's neck.
Knife with blue handle (P 235)	The deceased	Found embedded in the deceased's neck
Silver butterfly knife (P 236)	The deceased	Found under the deceased's body
Green shorts (P263)	The deceased and the accused	Worn by the accused at time of arrest.
Green coveralls (P295)	The deceased and the accused	Found on a bed in the accused's bedroom. The accused admitted it had been used to cover the deceased's body.

26 Bloodstains were detected at various parts of the flat. Swabs were taken of these bloodstains. Traces of the accused's DNA were found in bloodstains detected in the kitchen, the common corridor just outside the bedrooms and the living room.

Autopsy reports

27 Dr George Paul, a Senior Consultant Forensic Pathologist with the Forensic Medicine Division of the HSA, examined the body of the deceased and prepared a detailed report in which he drew attention to three distinct injuries (numbered "14", "15", and "16" respectively). I will provide brief descriptions of each:

(a) Injury 14 was described as an "incised stab wound present on the outer front of right side neck". The wound was assessed as having a lateral ("right to left") depth of 17.6cm and was, in all likelihood, caused by a "single edged somewhat thin bladed weapon or a double edged weapon with one edge not so sharp". Under cross-examination, Dr Paul testified that this injury could have been caused by P234 which was seized from the flat (see [25] above) and which the accused had referred to in his statement as the "knife with the black handle" (see [14] above).

(b) Injury 15 was described as an "[i]ncised somewhat vertical wound … in the upper outer part of right side of neck" which ran from "right to left, somewhat upwards and backwards" and had a total lateral depth of 13cm. Under cross examination, Dr Paul testified that this injury could have been caused by P236 which was seized from the flat (see [25] above) and which the accused had referred to in his statements as the "silver butterfly knife" (see [14] above).

(c) Injury 16 was described as a "T" shaped wound within which a kitchen knife with a blue handle (P 235, the same knife which was observed by the police officers who attended at the scene and which was described by the accused in his statements as the "knife with blue handle": see [25] and [14] above) was embedded. Dr Paul elaborated that the "wound went from left to right" and had a total depth of 13cm.

28 Dr Paul concluded that "[d]eath in this case was not as a result of a natural disease process" but was instead attributable to "haemorrhage from multiple stab injuries to neck" (*viz*, injuries 14 to16). He also opined that injuries 14 to 16 "individually and collectively were sufficient to cause death in the ordinary cause of nature."

The psychiatric evidence

29 The evidence on the accused's mental state came in the form of four psychiatric reports issued between 22 June 2012 and 22 October 2013, which were prepared by Dr Kenneth Koh, a senior consultant with the Department of General and Forensic Psychiatry at the Institute of Mental Health ("the IMH") ("Dr Koh").

The first psychiatric report

30 In his first psychiatric report dated 22 June 2012 ("the first psychiatric report"), Dr Koh detailed the psychiatric history of the accused. The accused first presented with symptoms of mental illness in 2006. After he had waved knives at his uncle, he was taken to the IMH by the police. Diagnosed with paranoid schizophrenia, he was treated with antipsychotic medication. For 11 days in May 2006, he was warded in IMH. Initially, after his discharge, he attended his follow-up sessions. He started to default on them around October 2006. He returned to the IMH in June 2007, when he was admitted by his family members, who reported that he had behaved in a hostile manner towards them. This

time, he was warded for about a month. For the next three and a half years, he duly attended his outpatient follow up appointments.

31 In February 2011, the deceased and Daniel reported that he had been exhibiting symptoms of a relapse. The accused refused to receive depot antipsychotic medication (*ie*, medication delivered by injection and specially prepared to release the antipsychotics in small amounts over a period of time, usually over a few weeks or a month) and insisted that he only be prescribed oral antipsychotics instead. He maintained this refusal in August 2011, when the deceased and Daniel informed the IMH staff that his condition had deteriorated and that they suspected that he had not been taking his medication regularly. They opined that the accused's condition had been under better control while he was on depot medication. The accused refused the reinstatement of depot treatment but agreed to be prescribed a higher dose of oral medication. During a home visit conducted in November 2011, the deceased informed the IMH staff that she doubted that the accused had been taking his medication regularly. However, the accused was assessed to have been well during the three outpatient visits (in January, March, and May 2012) that immediately preceded the date of the present offence.

32 Dr Koh reported that the accused's family members informed him that the accused had not been well for several months and that his condition had been deteriorating at an accelerating pace in the period immediately preceding the offence. Sunil also informed Dr Koh that he suspected that the accused had only pretended to take his medication and that he threw it away when he thought nobody noticed. Sunil also said that the accused was capable of behaving normally when others came to visit but that he regressed to abnormal behaviour when he thought he was not being observed.

33 In conclusion, Dr Koh maintained the diagnosis of paranoid schizophrenia and opined that, at the material time, the accused's "thinking would have been significantly deranged from a normal state such that his judgement [sic], impulse control and planning abilities would have been severely compromised". He observed that the accused's case is somewhat unusual because he appeared to "be rather well at interviews, engaging in the conversation and being relevant in speech and organized in his accounts". Dr Koh explained that this was because the accused's intelligence "aids him in disguising his symptoms". However, his lucidity belied the fact that his condition had regressed significantly.

34 Dr Koh's prognosis was not favourable. He opined:

> He is nonetheless, a ***dangerous individual*** for the following reasons: He has a *serious mental illness, but has* ***no insight*** *into this*, causing him to be ***poorly adherent [to] his treatment*** . There were ***no warning signs of violence*** , with the index offence being sudden, unexpected and extreme. *He* ***hides his symptoms very well, even from those who are trained*** *in the assessment* of such symptoms and who are in positions to help him. [emphasis in original removed; emphasis added in italics and bold italics]

The second and third psychiatric reports

35 Dr Koh's second psychiatric report dated 24 July 2012 ("the second psychiatric report") and his third ("the third psychiatric report") dated 30 April 2013 are not comprehensive medical reports but more in the nature of clarificatory letters sent in response to queries that had been raised by IO Tan. In the second psychiatric report, Dr Koh opined that the accused "requires long term medication and treatment" coupled with "close supervision" to ensure that he remains compliant with his treatment regimen. Without such treatment, the accused is "highly likely to suffer from a relapse of his schizophrenia" and that he "can be a danger to himself and others if he does not take his medication". Dr Koh clarified that, even with medication, there would still be a residual, albeit much

reduced, chance of a relapse. Dr Koh concluded by saying that the "best treatment" would be for the accused to receive a "depot antipsychotic and be in a facility where his consumption of oral antipsychotic medication can be enforced and observed".

36 The focus of the third psychiatric report was on the likelihood that the accused was a "person of unstable character" who would be likely to reoffend and commit offences of like nature in the future. Dr Koh acknowledged that the accused was not a person with an established history of violence nor did he exhibit any psychopathic traits. However, the concern was that the accused suffered from a major mental illness but did not display any insight into his illness or his need for continuous treatment. This, when viewed in light of the fact that the offence in question was "sudden, unexpected and extreme, [and committed] with little apparent warning" warranted the conclusion that the accused be considered a "dangerous and unpredictable individual."

The fourth psychiatric report

37 In Dr Koh's last report dated 22 October 2013 ("the fourth psychiatric report"), he noted that the accused had been consuming antipsychotic medication regularly for the past year and that his schizophrenia appeared to be in remission, though he continued to harbour some "residual and possibly fixed delusions surrounding the alleged murder". Dr Koh opined that the accused was "fit to plead in Court".

The defence's case

38 At the close of the Prosecution's case, the accused submitted that there was no case to answer. He cast doubt on the accuracy of the evidence presented, arguing that the "statements made by the witnesses do not correspond to the evidence being presented in court". I did not accept his submission that there was no case to answer, and called on him to enter his defence. The accused elected to take the stand.

39 The accused did not say much during his evidence-in-chief save to intimate that the evidence had been fabricated. Under cross-examination, however, he gave a full account of the events which broadly resembled the version in his statements. The narrative began with him going downstairs to purchase food. After he returned, he consumed his dinner in the living room. At this point, the deceased "asked [him] about money" and did not stop the questioning even after he entered the kitchen, continuing to ask him "for money and more money." After this, the deceased attempted to "outrage his modesty" and "harm" him. She grabbed him by the hair, scratched his face, and tried to take off his T-shirt. The deceased also told him "I want a son" and tried to take his clothes off. The accused also alluded to an earlier incident when the deceased had stabbed him "slightly in the stomach" with a knife, but said that that "it was not a big incident".

40 After that, the accused attacked the deceased with three knives, elaborating that "[o]ne was a black handle, one was a blue handle, the third knife was a silver butterfly knife" as follows.

(a) The first stabbing took place in the kitchen immediately after the deceased allegedly grabbed him by the hair. The accused reached for a knife which was on the kitchen counter and stabbed the deceased in the neck. He said that he did not apprehend any threat to his life at the time but said that it was a "spur of the moment thing". He accepted that when he stabbed her in the neck, he knew that, left untreated, the deceased would probably die from the injury.

(b) The deceased then staggered back towards the common area outside her bedroom. The accused then picked up a second knife. He returned to where the deceased was, "wrestled with

her for a while and … stabbed her in the neck again". He accepted that at this point, he could not reasonably have apprehended any danger from her.

(c) Finally, he picked up a third knife and "cut her throat from right to left". He explained that he did so before he "needed an end to her line of questioning about her---her relationship with me so it seemed like the right thing to do at that time".

41 He then explained that he "swept all the debris away and … mopped up the floor" and that he had some difficulty trying to "push her under the bed". Shortly after, Sunil returned home.

The law on culpable homicide

42 The relevant provisions on culpable homicide within the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") read:

Culpable homicide

299. Whoever causes death by doing an act with the intention of causing death, *or with the intention of causing such bodily injury as is likely to cause death*, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

…

Murder

300. Except in the cases hereinafter excepted culpable homicide is murder —

(*a*) if the act by which the death is caused is done with the intention of causing death;

(*b*) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(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*; or

(*d*) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

…

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

[emphasis added]

43 The Prosecution have particularised the charge against the accused in terms of an offence under s 299 (see the charge set out at [1]). More specifically, the Prosecution framed the charge under the *second* out of the three limbs of s 299 (see the italicised portion of s 299 at [42]). Therefore, in order to make out the charge as framed, the Prosecution had to prove beyond

reasonable doubt that the accused performed an act which caused the death of the deceased ("the *actus reus*"), and that the accused performed the act with the intention of causing such bodily injury as was likely to cause death ("the *mens rea*").

44 The *actus reus* requirement is straightforward: the inquiry is whether the accused had performed an act which is causatively linked with the death of the deceased. What the *mens rea* requires is more complicated. In my view, the second limb of s 299 invites two separate inquiries. The first is a *subjective* inquiry whether the accused intended to inflict the particular injuries found on the deceased. The second is an *objective* inquiry whether the particular injuries were "likely to cause death".

45 In *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174 ("*Tham Kai Yau*"), the Federal Court of Criminal Appeal commented that the Malaysian Penal Code provisions relating to culpable homicide and murder (which are *in pari materia* with the Singapore provisions) are "probably the most tricky in the Code and are so technical as frequently to lead to confusion". The Federal Court explained that there are two situations in which culpable homicide may be made out: (a) where the elements of the offence of murder have been proved, but one or more exceptions contained in s 300 apply; or (b) where the necessary degree of *mens rea* in s 299 have been proved, but not the special degrees of *mens rea* in s 300 (see 176G-176I).

46 It was similarly observed by the Indian Supreme Court in *State of Andhra Pradesh v Rayavarapu Punnayya & another* [1977] 1 SCR 601 ("*Rayavarapu Punnayya*") that "[i]n the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie" (at 606B). In other words, all instances of murder would also constitute culpable homicide, but not vice versa. In delivering the judgment of the court, Sarkaria J, provided a comparative table of the co-relation between ss 299 and 300 of the Indian Penal Code (which are *in pari materia* with ours), and also provided what I think to be a harmonious reading of the two provisions. In summary, he held:

(a) The first limb of s 299 ("intention of causing death") and s 300(*a*) map onto each other and are coextensive. The inquiry is fully subjective.

(b) The third limb of s 299 ("knowledge that he is likely by such act to cause death") corresponds with s 300(*d*). Both require knowledge of the probability of causing death. The main difference is in the degree of probability that death would result, with the latter requiring that the accused must know that the act in question "is so imminently dangerous that it must in *all* probability cause death or such bodily injury as is likely to cause death". Once again, the inquiry is fully subjective.

(c) The second limb of s 299 ("intention of causing such bodily injury as is likely to cause death") is unique in that it corresponds with *both* ss 300(*b*) and 300(*c*). The point of commonality between all is that they all demand proof of the accused's intention to cause bodily injury. The second limb of s 299 further requires that the injury be likely to cause death. Section 300(*b*) requires proof of something more specific: *viz*, that the offender *knows* that the act in question will be likely to cause the death of the specific person to whom the harm is caused. Section 300(*c*) only requires that the injury in question be "sufficient in the ordinary course of nature to cause death." In *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR (R) 582 ("*Lim Poh Lye*"), our Court of Appeal cited the well-known decision of the Indian Supreme Court in *Virsa Singh v State of Punjab* [1958] SCR 1495 ("*Virsa Singh*"), and held that this s 300(c) inquiry is an *objective* one.

47 While s 300(*b*) invites a purely subjective inquiry, s 300(c) invites an inquiry which is one part

subjective (of the intention of causing bodily injury), and one part objective (that the particular injury is sufficient in the ordinary course of nature to cause death). In order for both ss 300(*b*) and 300(*c*) to fall within the ambit of s 299, the interpretation of s 299 has to be wider than both. This explains my view at [44] above that the second limb of s 299 encompasses a subjective inquiry of the intention to cause a particular bodily injury, and an objective inquiry that the particular injury is likely to cause death. The learned authors of a local treatise on criminal law (Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2nd Ed, 2012)) put it the following way (at para 9.62):

> The first and third limbs of s 299 (intention to kill and knowledge that death is likely) are fully subjective but the second limb is not. As a matter of interpretation, it cannot be necessary to prove that the accused actually realised, or even considered the likely effects of the injuries that were inflicted. If the 'likelihood if death' clause was to be read in this way, the second limb of s 299 would become identical to s 300(b). The second limb of s 299 must therefore be partly subjective (the prosecution must prove that the accused intended to cause a bodily injury) and partly objective (it must be proved that such injury was likely to cause death).

48 Nonetheless, there remains a subtle difference between the second limb of s 299 and s 300(*c*), which lies in the degree of probability that death would eventuate from the injury caused (see *Rayavarapu Punnayya* at 607G–H). For the former, proof that the injury is "likely to cause death" suffices. For the latter, it must be shown that the injury is "sufficient in the ordinary course of nature to cause death".

The conviction

49 After assessing all the evidence adduced, I was of the view that the charge had been made out. I begin with the *actus reus*, which the Prosecution identified as being the "stabbing [of the deceased] on her neck with multiple knives" (see [1] above). As set out above, the accused confessed to having inflicted injuries 14 to 16, which "individually and collectively" caused the death of the deceased, establishing the *actus reus* (see [14], [27], and [40]).

50 Turning to the *mens rea*, it was also clear to me that the accused subjectively intended to inflict the particular injuries in question. The accused had deliberately retrieved the knives one after the other in order to stab the deceased in the neck. This was particularly evident in the case of the second and third injuries. After stabbing the deceased for the first time, the accused walked away, returned to the kitchen to retrieve a knife before returning to stab her in the throat one more time in order to prevent her from making a call (see [14] above). Likewise, the third injury was also deliberate and intentional. On this occasion, the accused admitted that he took another knife to perform the act so that he would not be "attacked again" (see [14] above), and to stop the deceased from questioning him (see [40(c)] above). In the circumstances, I found that the accused intended to cause the injuries 14 to 16.

51 On the likelihood that death would be caused, I noted that the injuries 14 to 16 had been assessed by Dr Paul to be, "individually and collectively", "sufficient to cause death in the ordinary cause of nature" (see [28] above). I accepted the evidence. This more than satisfied the *objective* inquiry that the particular injuries were "likely to cause death". Though it is not necessary to do so, I would go further to state that it was an irresistible inference that the accused *subjectively* knew that the injuries were likely to cause death. This was obvious from the serious nature of the injuries and the locations where the accused inflicted them. Further, as set out at [40(a)] above, the accused knew that, left untreated, the deceased would probably die from the injury from the first stab.

52 I should also state that given the position of the accused that he was attacked by the deceased, I also considered whether the accused could rely on the right of self-defence. After consideration, it was clear to me that he could not. Section 100 of the Penal Code provides that there is no right of private defence which extends to the causing of death unless a person faces an assault which may reasonably cause the apprehension of death or grievous hurt. The accused must establish this on a balance of probabilities. Even taking the accused's case at its highest and positing that the deceased had attempted to harm him or outrage his modesty (which I did not accept), those acts, either collectively or individually, would not give rise to the right of private defence. Under cross-examination, the accused admitted as much when he stated that he did not apprehend any threat to his life before he stabbed the accused for the first and second times (see [40(a)] and [40(b)] above).

53 For all of these reasons, I found that the Prosecution had proved the charge against the accused beyond reasonable doubt. Accordingly, I convicted the accused.

54 For completeness, I would like to comment on an aspect of the Prosecution's case which somewhat troubled me. It seemed to me that there was a disconnect between the way the charge was framed and the way the Prosecution conducted their case. For one, in the course of cross-examination, the Prosecution put to the accused that he was "suffering from such abnormality of mind as substantially impaired [his] mental responsibility", and also pursued a line of questioning along the same vein. The purpose appeared to be to raise the possibility that Exception 7 to s 300 of the Penal Code might apply (see [42] above). The problem with this approach, however, is that Exception 7 would only be engaged if the Prosecution had proved the offence of murder beyond reasonable doubt and the accused sought to have it reduced to the lesser charge of culpable homicide not amounting to murder. This was clearly inapplicable here because the charge, *as framed*, was not for the offence of murder to begin with, but culpable homicide *simpliciter*. Therefore, the Prosecution's approach was incongruous with the charge. In fact, the accused answered these questions in the negative, refusing to admit to his mental condition.

55 Furthermore, at para 43 of their closing submissions, the Prosecution wrote:

> 43 *The law on culpable homicide* as enunciated in the decision of the Indian Supreme Court in *Virsa Singh v State of Punjab* AIR 1958 SC 465 … has been adopted and applied by the Singapore courts, notably in the Court of Appeal case of *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR(R) 582 … *In determining whether there was an intention on the part of the accused to cause such bodily injury as is likely to cause death*, the Court of Appeal referred to the explanation by Bose J at [16] in *Virsa Singh*:
>
> …
>
> 44 The Prosecution must prove that the accused subjectively intended to inflict the particular injury which was in fact inflicted on the victim. *Such an injury must be objectively assessed to be sufficient in the ordinary course of nature to cause death.* [emphasis added]

56 As discussed above at [46(c)], both *Virsa Singh* and *Lim Poh Lye* were concerned with the offence of *murder* as defined under s 300(*c*), and not the offence of culpable homicide under the second limb of s 299. The elements of the two offences are not coextensive. It was unhelpful for the Prosecution to cite authorities which discuss s 300(*c)* in aid of the interpretation of the second limb of s 299 without explaining how the two provisions relate to each other. This can only cause confusion, as was the case here when the Prosecution incorrectly submitted that to prove the present charge under the second limb of s 299, objectively, the injuries are "sufficient in the ordinary

course of nature to cause death" rather than that the injuries are "likely to cause death".

57 It seemed to me that the Prosecution was trying to prove the more serious offence of murder under s 300(*c*), along with the application of Exception 7, so as to discharge their burden of the less serious offence of culpable homicide under s 299. For good order, the Prosecution's focus should have been to prove the charge as they had framed it and to identify the correct test for the *mens rea* accordingly. That being said, there was absolutely no prejudice whatsoever to the accused, and nothing material turned on these points. With that, I now turn to discuss the sentencing of the accused.

The sentence

The sentencing principles

58 Section 304(*a*) of the Penal Code provides that whoever commits culpable homicide not amounting to murder shall be punished either with imprisonment for life (and shall also be liable to caning) *or* for imprisonment for a term which may extend to twenty years (and shall also be liable to fine or to caning).

59 In *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 ("*Aniza*"), the Court of Appeal held that the court is justified in imposing a term of life imprisonment on mentally unstable offenders for the sake of public protection where it is satisfied that the offenders will pose a "serious danger to the public for an indeterminate time" (see *Attorney-General's Reference No 32 of 1996 (Steven Alan Whittaker)* [1997] 1 Cr App R (S) 261 at 264 per Lord Bingham CJ, cited in *Aniza* at [14]). For this purpose, the Court of Appeal endorsed the use of the "*Hodgson* criteria", a test first articulated by the English Court of Appeal in the case of *R v Rowland Jack Forster Hodgson* (1968) 52 Cr App R 113. The three limbs of this test are:

(a) The offence or offences are in themselves grave enough to require a very long sentence ("*Hodgson* 1").

(b) It appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future ("*Hodgson* 2").

(c) If the offences are committed, the consequences to others may be specially injurious ("*Hodgson* 3").

60 From *Aniza* and some of the cases which have applied the *Hodgson* criteria, the following principles can be distilled:

(a) The dominant sentencing objective underpinning the *Hodgson* criteria is public protection (see *Aniza* at [12]). "The purpose of the three conditions is *not to determine how evil* a particular accused person can be. Rather, it is to extrapolate from his condition and his actions, the likelihood of a relapse and what the probable consequences might be" (see *Public Prosecutor v Kwok Teng Soon* [2001] 3 SLR(R) 273 at [29]).

(b) The *Hodgson* criteria are cumulatively sufficient to justify the imposition of a life sentence on a mentally unstable offender (see *Aniza* at [34]). They provide a principled basis (public protection) for the imposition of the maximum sentence of life imprisonment on a mentally unstable offender for public protection (see *Aniza* at [34] and [71(a)(i)]). It is, however, not applicable to normal offenders for whom the usual test that the highest punishment should only

be reserved for the worst types of cases would still apply.

(c) The *Hodgson* criteria provide a guide for distinguishing between mentally unstable offenders who pose a long-term threat and therefore need to be incarcerated for life for the sake of public protection and those who suffer from a transient illness who should be rehabilitated and reintegrated into society when it is safe to do so (see *Aniza* at [34] and [71(a)(ii)]). As the Court of Appeal explained, "mentally unstable offenders who have committed serious offences should only be kept in prison for as long as is necessary for the protection of society (from the likelihood of recidivism), but no longer" (see *Aniza* at [2]).

(d) In applying *Hodgson* 2, there is no need to demonstrate that the accused has a "high propensity" to commit an identical offence. Instead, the court "need only be persuaded that a likelihood of such future offences being committed exists … It would suffice that the offences contemplated fall within the broad spectrum of somewhat similar offences" (see *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 707 ("*Constance Chee*") at [7]).

(e) The criteria "justify" the imposition of a life sentence but they do not mandate it. Satisfaction of the *Hodgson* criteria does not invariably mean that a sentence of life imprisonment has to be imposed (see *PP v Rohana* [2006] SGHC 52 at [12]). The court still has to examine the facts and circumstances in their totality to determine what the appropriate sentence should be. This proviso has to be read in light of the fact that the dominant sentencing imperative in this area is public protection.

The Prosecution's submissions

61 The Prosecution relied on the *Hodgson* criteria and argued that these three criteria had been fulfilled so as to justify the imposition of a sentence of life imprisonment on the accused. They submitted that the offence was "shocking, brutal and grisly" and that the consequences of the commission of future similar offences would undoubtedly be very grave. They also argued that the psychiatric evidence revealed that the accused has an "unstable and unpredictable character", and that he is likely to commit such offences in the future. The accused shows no insight that he has a serious mental illness. He is a dangerous and unpredictable individual who committed a sudden and extreme act with little apparent warning, and he is an intelligent offender who is able to disguise his mental illness. Taken in their totality, they submitted that the best outcome would be for the accused to be placed in a facility where his consumption of antipsychotic medication can be supervised, observed and enforced where necessary.

62 Further, the Prosecution submitted that there were many aggravating factors and few mitigating factors. The accused had killed his mother in a "brutal and merciless" manner and had attempted to hide evidence of his deed after the fact, revealing his impenitence. While the accused was relatively young, being 34 years old and a first-time offender, these factors were of little mitigating value, given the severity of the offence committed.

The mitigation plea

63 In his mitigation plea, the accused argued that the *Hodgson* criteria had not been satisfied, and that a sentence of life imprisonment should not be imposed on him. The relevant extracts of what he said are set out as follows:

> … I object to the prosecution's submission for sentencing with regard to what they have presented today, in light of that being of no relevance to this case at hand. *All examples which*

they have given show a lot of premeditation which is not present in this case … So, in all three cases, there is a level there's---a level of premeditation which is not present in this case. In this case, the victim did attack me to an extent ... *So I fail to see how this has satisfied the limb of the Hodgson criteria.*

Secondly, all three cases they have mentioned is---has stated that there have---the victims---that their perpetrators have this, mainly is his veneer of normality. … *And the assessment conducted by IMH in the psychiatric department, is er, barely half an hour to 40 minutes in a span of 2 years.*

And as far as medication goes, I have consistent in my medication since 2008 both injection and orally. And medication is not cheap … *So I fail to see how they have satisfied the limb of the Hodgson criteria.*

…

[Emphasis added]

Decision

64 I agreed with the Prosecution that *Hodgson* 1 had been satisfied. This was a brutal act of violence committed in a familial context, and should attract a very long sentence. I accepted the accused's contention that the offence was not pre-meditated. However, even in the absence of pre-meditation, the offence was still very grave and clearly satisfied *Hodgson* 1. By the same token, it also seemed to me that *Hodgson* 3 had also been satisfied. If the accused were to commit offences of like nature, the consequences to others would be specially injurious. I therefore turned to *Hodgson* 2.

65 *Hodgson* 2 requires a determination whether the accused is a person of an unstable character likely to commit such offences in the future. In performing this exercise, the court is required to extrapolate from the nature of the index offence and the history of the accused whether the accused is a person who is of unstable character and therefore likely to reoffend. This is ultimately "an exercise in value judgment and common sense. It involves making a considered judgment concerning the unknown future based on present known facts" (see *Public Prosecutor v Barokah* [2009] SGHC 46 at [60]). In performing this exercise, the court will have regard to the opinions of psychiatrists but the final assessment still rests with the court.

66 I begin with the accused's clinical history which, in my view, provided evidence that deterioration in the accused's mental state manifested itself in a propensity towards hostile and violent behaviour. To recapitulate, the accused first presented to IMH in 2006 when he was reported as having "waved knives" at his uncle (see [30] above). Similarly, in the months prior to being warded for the second time in 2007, he had behaved in a "hostile" manner towards his family members. What caused the most concern were the facts and circumstances surrounding the commission of the offence. I agreed with Dr Koh that the offence was "sudden, unexpected and extreme, [and committed] with little apparent warning" (see [36] above). Even accepting the accused's case at its highest, there was little by way of provocation on the deceased's part to trigger his reaction. The sheer level of violence he displayed against his mother, who had been his caregiver, was inexplicable.

67 It was clear to me that the offence had been precipitated by a rapid decline in the accused's mental state in the months preceding its commission (see [32] above). In his psychiatric report, Dr Koh assessed that at the material time, the accused's decision-making faculties were "significantly

deranged from a normal state such that his judgement, impulse control and planning abilities would have been severely compromised" (see [33] above). The testimony of the accused at trial supported this finding. When he was cross-examined on his motivation for the first stab, he answered:

> Q: All right, let's just leave it at that. So, she's shorter than you at all points in time. And at this point in time you were able to---you were trying to push her away. Now did you believe that there was any grave threat to your life at this point?
>
> A: No, but I did believe it would lead to this not reflecting well on anyone in a few weeks' time.
>
> …
>
> Q So your judgment of her actions was that it would not look good on anyone, and therefore you were of the view that stabbing her on the neck was the best response?
>
> A It is a spur of the moment thing, I did not plan the stabbing of the neck but it---
>
> Q: I didn't say you did but in the spur of the moment, it was, in your view, the right thing to do?
>
> A: Yes.

He responded in a similar vein when asked why he thought there was a need to cut the deceased the third time, even after she had clearly succumbed to her injuries:

> A: She stopped moving, she died after I cut her.
>
> Q: Right. Okay. And why were you trying to decapitate her?
>
> A: I was not trying to decapitate her; I was trying to get her to stop moving.
>
> Q: And why was that so important to you?
>
> A: Er, I needed to an end to her line of questioning about her---her relationship with me so it seemed like the right thing to do at that time.

68 A parallel can be drawn with the case of *Public Prosecutor v Hwang Yew Kong* [2006] SGHC 22 ("*Hwang Yew Kong*"). There, the defendant suffered from residual schizophrenia. On the day of the offence, he was in his bedroom watching television when he heard his father ask him whether he had taken his money. The defendant lost his temper, picked up a knife and proceeded to slash and stab his father, continuing to do so even after the elderly man screamed for help and collapsed onto the floor. In assessing him to be a highly dangerous individual, Tay Yong Kwang J wrote at [23] that it would "be highly unrealistic" to say that he was not of unstable character. While he presented "a picture of calm and normality when there [was] nothing to provoke or upset him", "*it would not take very much to trigger off his explosive rage and turn him into a maniacal and merciless killer*". In his rage, "he could turn brutally on someone who was very close to him and who had taken care of him all his life. *His extremely violent reaction was totally out of proportion to a relatively minor accusation*" [emphases added].

69 From the facts as set out at [66] and [67] above, I had no doubt that if the accused's illness could not be controlled, he would be an unstable, unpredictable and dangerous individual who would remain a serious threat to himself and to those around him. Therefore, the key question was whether his illness could be managed such that the risk to public safety would recede to a level that would

justify his release. After careful consideration of all the facts and circumstances, I was not satisfied that the accused's illness could be sufficiently managed outside an institutional setting, and that he would remain a danger to the public at large for the foreseeable future. There were three inter-related points which weighed heavily in favour of such a conclusion.

70 First, I was concerned that, as reported by Dr Koh, the accused did not show any insight into the fact that he has a mental illness and of his need for treatment and medication. Prior to the offence, his family members and psychiatrists harboured suspicions that he had been defaulting on treatment. This problem was exacerbated by his refusal of depot medication, which made it even more difficult for his caregivers to ensure that he complied with his treatment regimen and took his medication regularly (see [32] above). Contrary to the accused's contention that he had been compliant in taking his medication since 2008 (see [63] above), I had little doubt that this tragic incident was due in part to the fact that he had not been in full compliance with his treatment regimen in the months preceding the offence. His lack of insight into his medical condition continued at trial, as was borne out during cross-examination when he steadfastly denied that he suffered from a mental illness at the material time:

> Q: Would you agree that you had paranoid schizophrenia at the time of the offence, Mr Sujay?
>
> A: I don't understand the diagnosis. How would you define "paranoid schizophrenia"? …
>
> Q: I put it to you that Dr Kenneth Koh's diagnosis is correct and that you were suffering from paranoid schizophrenia at the time of the offence. You can agree or disagree.
>
> A: Disagree.
>
> Q: Yes. I put it to you that this significantly impaired your thinking and contributed to the offence committed by you that night on the 27th of May 2012.
>
> A: How would you explain "impaired your thinking"?
>
> Q: Do you agree or disagree, Mr Sujay?
>
> A: Disagree.

71 In *Public Prosecutor v Mohammad Zam bin Abdul Rashid* [2006] SGHC 168 ("*Mohammad Zam*"), the offender, pleaded guilty to a charge of culpable homicide not amounting to murder. He suffered from Frontal Lobe Syndrome ("FLS"), which manifested in a significant alternation of habitual patterns of behaviour and a loss of control over the expression of emotions, needs, and impulses. The evidence was that FLS, while irreversible, could still be managed with the aid of a strict treatment regimen which would reduce the violent tendencies and improve the accused's impulse control. However, Tay Yong Kwang J held (at [35]) that he had "no confidence at all in his [*ie*, the offender's] undertakings that he will comply with medication and continue with treatment upon his release, bearing in mind his history and *despite the realisation that he is suffering from FLS*" [emphasis added] and that he "very much doubt[ed] that the [offender] will have the discipline to adhere to such a regime outside the confines of incarceration" (at [39]).

72 Returning to the present facts, given the accused's refusal to fully acknowledge his mental illness and his previous reluctance to comply with treatment, I had no doubt that left to his devices, the accused would default on his treatment and medication.

73 Second, the accused's intelligence (as evinced by the articulate responses during the trial) had served to assist him in hiding his symptoms, even from professionals trained in the assessment of psychiatric disorders (see [34] above). As observed by Dr Koh, in the years leading up to the present offence, he had already demonstrated his capacity and ability to conceal symptoms of his illness from those around him. This meant that it would be extremely difficult for any treatment regimen to be enforced unless he received close supervision and regular medical attention.

74 Third, I noted that there was no evidence of any post-release plan for the care of the accused. In cases involving individuals with mental disorders, an important consideration is the presence of strong familial and social structures for the enforcement of the prescribed treatment regimen outside of a controlled environment such as that of a prison (see *Mohammad Zam* and *Public Prosecutor v Lim Ah Liang* [2007] SGHC 34). In *Constance Chee*, the offender's three sisters had each sworn affidavits undertaking to assume responsibility for the offender's future medical care and supervision upon her release from incarceration. On the strength of these undertakings, V K Rajah J (as he then was) held that the offender's illness could be adequately managed such that her propensity for violence would sufficiently recede to the point which it could be said that she would no longer be a real danger to the public.

75 Before me, there were no indications that there would be anyone who would be able or willing to take care of the accused upon his release, let alone provide any guarantees as those furnished in *Constance Chee*. I was mindful of the fact that prior to the offence, the accused had been cared for by the deceased and his uncle, and that he lived with his siblings. The deceased is now gone and there was no basis to believe that his uncle and siblings would be able or willing to provide the requisite supervision and care.

76 From the foregoing, I reiterate my earlier statement that if the accused's illness cannot be controlled, he would remain an unstable, unpredictable and dangerous individual, and pose a serious threat to himself and to those around him. As Dr Koh opined, paranoid schizophrenia is a condition that requires long term medication and treatment, without which a relapse would be highly likely (see [35] above). Even with a strict treatment plan, there is no guarantee, as Dr Koh has clarified, that the accused's condition would not worsen. I concluded that the likelihood of recidivism existed, and that it would remain unless the accused remained in a controlled environment in which his treatment and medication may be supervised and enforced. The requirement set out in *Hodgson* 2 had thus been satisfied and the *Hodgson* criteria had been satisfied.

77 At this juncture, it is appropriate to deal with the matters put forth by the accused in his mitigation. It seemed to me that the accused was making three points. First, the accused distinguished the precedent cases cited by the Prosecution on the ground that the present offence was not pre-meditated. Presumably, his contention was that the present offence was not as serious or grave as those in the precedent cases and that, consequently, he ought not to receive a sentence of life imprisonment. However, as set out at [60(a)], the *Hodgson* criteria provide an alternative to the principle that the highest punishment should only be reserved for the worst types of cases. As indicated, the *Hodgson* criteria had been satisfied. Also, I have already expressed my view that this was indeed a serious and grave offence.

78 Second, the accused seemed to challenge the psychiatric evidence, especially regarding how one goes about assessing a person who appears normal to be of an unstable character. In particular, the accused said that the psychiatric reports were merely based on short interviews over the two years (see [63] above). I rejected this argument. The psychiatric reports were based on interviews with the accused, previous medical records with IMH, interviews with the family members and observations made by the medical officers who attended to the accused while in remand. I found the

psychiatric evidence credible. Further, I did not rely on the conclusions of Dr Koh uncritically but also checked to see that they supported by the accused's testimony in court (see [67], [70] and [73]) before arriving at the conclusion that the accused was a person of unstable character who would be likely to commit similar offences in the future if treatment were not enforced.

79 Third, the accused submitted that since 2008, he has been compliant with his treatment and medication. As set out at [70], I did not accept this.

80 In my judgment, based on the *Hodgson* criteria, a sentence of life imprisonment was justified. Having reviewed all the other facts and circumstances, including matters stated by the accused, I found no other considerations that militated against the imposition of such a sentence. Accordingly, I so ordered. Following the lead of Tay J in *Hwang Yew Kong* at [20], I did not think that caning was warranted given the accused's mental condition. I therefore made no order for caning.

Conclusion

81 This has been a terrible tragedy for the family. It has taken away the life of the deceased and has resulted in the incarceration of the accused. For Daniel, Sunil and Sheena who witnessed the immediate aftermath of the offence, the toll this has exacted on their lives must be tremendous. One can only hope that with time, there will be some measure of closure and healing.

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