IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 9

Criminal Case Appeal No 39 of 2015

Between

ISKANDAR BIN RAHMAT

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

Criminal Motions Nos 14 and 17 of 2016

Between

ISKANDAR BIN RAHMAT

… *Applicant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Appeal] — [Adducing fresh evidence]

[Criminal Law] — [Offences] — [Murder]

[Criminal Law] — [Special exceptions] — [Diminished responsibility]

[Criminal Law] — [Special exceptions] — [Exceeding private defence]

[Criminal Law] — [Special exceptions] — [Sudden fight]

TABLE OF CONTENTS

Iskandar bin Rahmat
v
Public Prosecutor and other matters

[2017] SGCA 9

Court of Appeal — Criminal Appeal No 39 of 2015, Criminal Motions Nos 14 and 17 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
26 October 2016

3 February 2017 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an appeal against the conviction of the Appellant, Iskandar bin Rahmat, on two counts of murder under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed), punishable with death under s 302(1) of the Penal Code. The Appellant challenges the convictions on the basis that his actions do not show an intention to cause death, but instead (assuming that one or more of the exceptions to murder under s 300 does not apply) reflect only an intention to cause injuries sufficient in the ordinary course of nature to cause death under s 300(*c*) of the Penal Code, an offence which does not attract the mandatory death sentence. As just alluded to, he also relies upon three different exceptions to murder under s 300 of the Penal Code (including s 300(*a*) and (*c*)), namely, (a) Exception 2 (exceeding the right of private defence);

(b) Exception 4 (sudden fight); and (c) Exception 7 (diminished responsibility). In the event that one or more of these exceptions applies, the Appellant argues for the imposition of a sentence of 10 years' imprisonment under s 304(*a*) of the Penal Code. Finally, in the event that the court is of the view that the Appellant ought to be convicted under s 300(*c*) of the Penal Code instead, the Appellant argues for the imposition of a sentence of life imprisonment instead of the death sentence under s 302(2) of the Penal Code.

2 During the period leading up to the present appeal, the Appellant also filed two separate criminal motions, *viz*, Criminal Motion No 14 of 2016 ("CM 14/2016") and Criminal Motion No 17 of 2016 ("CM 17/2016"). CM 14/2016 was filed on 19 July 2016 and is an application for leave to adduce a forensic pathology report by Dr Ong Beng Beng ("Dr Ong") dated 13 July 2016 ("Dr Ong's Pathology Report"). CM 17/2016 was filed on 5 August 2016 and is an application for leave to adduce a forensic psychiatric report by Dr John Bosco Lee ("Dr Lee") dated 3 August 2016 ("Dr Lee's Psychiatric Report").

Facts

3 The background facts leading to the Appellant's arrest have been covered comprehensively in the decision of the judge below ("the Judge"), which may be found at *Public Prosecutor v Iskandar bin Rahmat* [2015] SGHC 310 ("the Judgment"). Most of the facts are not disputed by the parties and we do not propose to repeat them here. What was of contention between the parties were the events that took place in the house of the first victim, Mr Tan Boon Sin ("D1"), over a period of about 30 minutes, and it suffices for the present appeal to focus on what had happened (or at least, what the

Appellant alleges to have happened) during that period of time, save for the following key facts.

4 The Appellant was an investigation officer with the Singapore Police Force ("SPF"). Between 2012 and 2013, the Appellant started experiencing serious financial difficulties and was at risk of losing his job. The Appellant thus devised a plan to rob D1. D1 had stored a substantial sum of money in his safe deposit box at Certis CISCO ("CISCO") which the Appellant knew about because he had previously come across a police report filed by D1 regarding some monies missing from the safe deposit box. The Appellant's plan was to call D1 and introduce himself as a police officer. He would inform D1 that he had received information that the latter's safe deposit box at CISCO would be "hit", and that the latter should therefore remove its contents so that he could place a CCTV camera inside the safe deposit box. For this purpose, the Appellant had prepared a dummy CCTV camera which he placed in a box.

5 On 10 July 2013, the Appellant met D1 at a petrol station near CISCO and executed his plan. D1 agreed to put the CCTV camera in his safe deposit box as requested and left for CISCO. However, as the CCTV camera and the box could not fit into the safe deposit box, D1 initially did not carry out the Appellant's instructions. When D1 returned to the petrol station, the Appellant told D1 that he could place the camera without its box in the safe deposit box. D1 again did as he was told and returned to CISCO. This time, he placed the camera into the safe deposit box successfully. D1 also removed the monies in his safe deposit box (we were informed that the sum was in excess of $600,000) and stored them in an orange bag that he had brought along for this purpose. D1 then returned to the petrol station to meet the Appellant. The Appellant, on the pretext of escorting D1 as D1 was carrying a lot of money, then followed D1 in D1's car to D1's house.

6 As alluded to earlier, what happened in D1's house is a matter of contention between the parties. We note at the outset that the Appellant does not dispute stabbing D1 and his son, Mr Tan Chee Heong ("D2"), in D1's house and that the injuries were fatal. What the Appellant contends is that his version of events of what transpired in D1's house shows that he had no intention to cause the death of either victim. It is to the Appellant's account of events that we now turn, which as the Judge noted at [19] of the Judgment, is the *only* account available.

The Appellant's version

7 According to the Appellant, he and D1 had arrived at the latter's house within a relatively short space of time. After the car was parked, D1 closed the gate. The Appellant and D1 then entered the house. D1 left the orange bag which contained the contents of his safe deposit box (and which contained an enormous sum of money in excess of $600,000) near the staircase that led up to the second floor of the house and went into the kitchen to get a drink for the Appellant. The Appellant alleged that he had wanted to grab the orange bag and run at that point, but did not do so as the outer gate was closed and he did not know how to open it. He then told D1 that he wanted to go outside to smoke, thereby getting D1 to open the gate. The Appellant accordingly went outside the house to smoke.

8 When he returned, he told D1 not to close the gate as his "partner" was about to arrive. D1 complied. The Appellant then asked to use the toilet, and D1 showed him to it (the toilet was inside the utility room adjoining the kitchen). The Appellant alleges that while in the toilet, he prepared himself "to walk out, grab the bag and run away". However, when he came out of the

toilet, he realised the bag was no longer by the staircase. He panicked and looked around cursorily for the bag but could not find it.

9 D1 was then in the living room using his mobile phone, allegedly speaking in Hokkien. The Appellant returned to the living room and pretended to receive some communication on his fake "walkie talkie". He told D1 that someone had opened his safe deposit box, and that D1 should grab the orange bag and the two of them would return to CISCO. D1 appeared to be shocked. He then headed into the kitchen and used the corded phone there. At this juncture, the Appellant was in the living room near the organ.

10 D1 then emerged from the kitchen and started walking towards the Appellant at a normal pace with his arms by his side. D1 said to the Appellant in Malay that the Appellant had cheated him as the CCTV camera did not contain any batteries. The Appellant was surprised at being discovered and told D1 that the CCTV did not require batteries. D1 did not respond and continued walking towards the Appellant. D1 came down the flight of steps connecting the dining room to the living room and then brandished a knife in his right hand. D1 raised his right arm and brought the knife down on the Appellant. The Appellant grabbed D1's hand but D1 pulled it away. This caused the knife to cut the Appellant's right hand. D1 came at the Appellant again in the same manner, but this time, the Appellant managed to wrest the knife from D1's hand. The Appellant alleges that he could not remember how he did this as it all happened very quickly.

11 D1 then started pulling at the Appellant. In response, the Appellant swung the knife at D1's neck in a right to left motion. The Appellant alleges that D1 remained strong and continued to tug at the Appellant and even tried to punch him. The Appellant therefore continued to stab D1. D1 started to

shout "Ah… Ah…", and the Appellant used his left hand to cover D1's mouth to stop him from shouting. D1 bit his hand in return. As the Appellant tried to pull his left hand away, he stabbed D1 a few more times at the neck area. The Appellant stabbed D1 until "his body became soft" and when D1's grip eventually weakened, the Appellant slowly lowered D1 to the floor.

12 The Appellant remembered stabbing D1 five to six times, though he acknowledged that the autopsy reports showed a lot more wounds. When asked why he stabbed D1 so many times, the Appellant's response was "I do not know". The Appellant testified that he was panicking at that point in time. He said that he was not aiming to kill D1 or for any vital areas, and that he just wanted to get D1 off him so he could run away. The Appellant claimed he was "fearing for [his] life" and that, due to the struggle, he could only swing the knife towards the neck of D1.

13 As the Appellant laid D1 on the floor, he heard someone, *ie*, D2, shout "Pa!" from the front door. The Appellant was still near the organ and D2 was two to three steps away from the Appellant. D2 charged at the Appellant with his hands clenched and swung his right fist at the Appellant. The Appellant blocked the blow with his left hand and intended to retaliate by punching D2 with his right hand. He alleged that he did not realise the knife was still in his right hand and he ended up stabbing D2 in the neck or face area. The Appellant testified that his immediate concern was to "run for [his] life", but D2 stood between him and the front door. D2 continued to punch and pull at the Appellant, and the Appellant swung his arms wildly in a state of panic, thereby stabbing D2 further. He testified that he was not aiming to stab at any particular part of D2's anatomy, though in his statement to the police dated 21 July 2013 he said that he "stabbed [D2] also at his neck a few times". He claimed that he had just wanted to get away from D2. D2 eventually fell

backwards, and even at this juncture, was still attempting to kick the Appellant. D2 then managed to stand up and another scuffle ensued. After a while, the Appellant released his grip on D2, who then turned around and ran out of the house.

14 The Appellant subsequently decided that he needed to leave the house quickly and abandoned any intention to find the orange bag. He said he went back to the toilet in the utility room to take a towel to wrap his injured hand (he recalled seeing one there when he used the toilet previously). On his way out of the house, the Appellant saw D1's car key on the floor and picked it up. He also picked up a parking coupon on which he had earlier written the words "Rahman" and "PID" at the request of D1, as well as his sunglasses and wristlet. In his statement dated 21 July 2013, he said he was afraid of being identified. He then walked out of the house towards the front passenger seat of D1's car to straighten the left side view mirror that was allegedly folded in when D1 first drove past the gate. He then walked round the front of the car to the driver's side, where he noticed some blood on the side of the car and on the floor of the porch. He thought D2 could have left the house already and denied seeing D2's body.

15 The Appellant started the car and reversed out of the house. He recalled the left side view mirror hitting against the gate again. Unbeknownst to the Appellant, D2's body was in the driveway, and the Appellant had reversed over D2's body. D2's body thus got caught in the undercarriage of the car and was dragged along by the car for some distance.

16 The rest of the Appellant's version of what happened after he left D1's house is largely not in dispute, and as alluded to above at [3], have been set

out in detail in the Judgment below. They are not necessary for the disposal of this appeal and we shall not repeat them here.

The victims' injuries

17 Before setting out the Judge's reasons for convicting the Appellant on two counts of murder under s 300(*a*) of the Penal Code, we summarise the injuries suffered by the victims as set out in the autopsy reports performed by Dr Gilbert Lau ("Dr Lau").

18 D1 suffered a total of 23 stab and incised knife wounds (excluding four defensive knife wounds he had on both hands) to vulnerable areas such as the head, neck and chest. Five wounds were to the neck of D1 and included a stab to the back of the neck that went 6cm deep and cut the cervical spinal cord. They also included a "deep, gaping incised wound" (measuring 8x5cm) to the front of D1's neck, which Dr Lau described as a "cut-throat injury across the front of the neck" that cut through a major artery. This was identified to be the substantive cause of death. Seven wounds were to the chest of D1 and included two stabs wounds that were, respectively, 11cm and 13cm deep. The 13cm deep wound was the deepest of all 12 stab wounds and was considered a contributory cause of death. Nine wounds were incised wounds to D1's face and scalp.

19 D2 suffered a total of 17 stab and incised wounds (excluding three defensive knife wounds on his hands) to the neck, face and scalp. Four wounds were stabs to the neck and included one to the back of D2's neck which stopped short of the cervical spinal cord, and another that was 7–8cm deep. The latter wound was considered the substantive cause of death. Three wounds were stabs to the side of D2's face, one of which was 8–9cm deep.

Ten wounds were incised wounds to D2's face and scalp. Considerable force was used to inflict one of the incised wounds to D2's scalp – this caused an open fracture such that fragments of the fractured bone were found adhering to the underlying part of the brain which had also been very superficially incised. D2 also suffered extensive grazing on his face, trunk and limbs, consistent with wounds caused by friction between D2's body and the road. Dr Lau said, however, that the stab wound to D2's neck was so severe that D2 would have been dead or at the brink of death before his body was dragged by the car.

The decision below

20 The Judge disbelieved the Appellant's evidence that his alleged plan was only to rob D1 and not kill him. He was of the view that it was obvious that escaping without being identified was crucial to the Appellant's plans. However, the Appellant's professed grab-and-run plan involved so many contingencies that only a very foolish prospective thief would adopt it. Furthermore, it would have been foolhardy in the circumstances for the Appellant to have hoped or assumed that D1 would be unable to identify the Appellant subsequently. The Judge found that the Appellant would not have come up with such an inane plan, especially when contrasted with the meticulous planning on his part for the charade with D1 earlier that day (at [73]–[75] of the Judgment). Even if the Appellant's plan was indeed a simple grab-and-run, there were ample opportunities for him to snatch the bag of money and run while he was at D1's house, and yet he did not do so. The Judge disbelieved the Appellant's explanation for these squandered opportunities, *ie*, that he felt bad about wanting to steal D1's money and did not want to cause any hurt to D1 by having to push him away (at [76]–[78] of the Judgment).

21 The Judge also disbelieved the Appellant's story that D1 had discovered his ruse and turned violent. There was no logical explanation as to how D1 had found out about the fake CCTV camera. It could not be the case that D1 had found out when he spoke to D2 over the telephone. The evidence demonstrated that D2 had left his office for D1's house that afternoon looking normal. Neither D1 nor D2 made a call to the police regarding the Appellant's trickery either. In all probability, D1 had asked D2 to come home to help with any statement the former had to give to the Appellant's "partner" (at [79]–[80] of the Judgment).

22 The Judge did not accept that D1 would want to hurt the Appellant with a dangerous weapon in his own house simply because he had found out that he had been tricked. D1 appeared to be a trusting and hospitable person. Furthermore, D1 was physically outmatched by the Appellant. D1's money was still with him and the police was only a telephone call away (at [81]–[83] of the Judgment).

23 The Judge was of the view that it was inconceivable that the Appellant, allegedly fearing for his life because D1 came at him with a knife, would think of muzzling his attacker. His anxiety to silence D1 demonstrated in truth that it was he who was attacking the hapless D1. This is corroborated by the sheer number of wounds to very vulnerable parts of D1's body, contrasted with the relatively minor injuries on the Appellant (at [84] of the Judgment). While it was not an efficient killing, the overwhelming number and severity of the injuries inflicted on D1 and D2 demonstrated the ferocity and viciousness with which the Appellant attacked them (at [85] of the Judgment). There was no doubt that the Appellant had intended to kill D1 as part of his plan, and for that purpose he brought along the knife (at [87] of the Judgment).

24 In so far as D2 was concerned, even if he had charged at the Appellant upon witnessing his father covered in blood being lowered onto the floor, he was doing no more than trying to protect his father or apprehend the Appellant. The Appellant was still holding the knife at that particular point in time. If there was any right of private defence to be exercised, it would belong to D2 and not the Appellant. There was also no sudden quarrel since all that D2 managed to utter was "Pa!" before he too became a victim of the Appellant (at [86] of the Judgment). D2 never featured in the Appellant's plan, but when he appeared, the Appellant could not allow D2 to live to recount what he had seen. The Appellant formed the intention to kill D2 there and then, or just before D2's arrival at D1's house (at [87] of the Judgment).

25 The Judge also dealt briefly with aspects of the Prosecution's case that differed from the Appellant's. The Judge did not accept the Prosecution's case that the Appellant suffered the cuts on his right hand when he attacked D2 (instead of D1) and that the Appellant was walking around looking for the orange bag of money before D2 arrived (at [90] of the Judgment). The Judge also rejected the Prosecution's case that the Appellant had hidden behind the door while waiting for D2 to arrive, and had ambushed him upon his arrival (at [91] of the Judgment). The Judge accepted that the Appellant ran out after D2 when the latter stumbled out of the house, but upon seeing D2 collapse just outside the house, he stopped giving chase (at [93] of the Judgment). The Appellant's purpose in going to the passenger side of D1's car was to chase D2 and not to adjust the side mirror as he alleged (at [94] of the Judgment). While the Appellant knew he would run over D2's body, that was not his purpose. There was simply no other way to drive away from D1's house other than over D2's body (at [96] of the Judgment). Finally, in so far as the knife

was concerned, the Judge found that it belonged to the Appellant (at [97] of the Judgment).

26 The Judge therefore found that neither the exceptions of exceeding the right of private defence nor sudden fight applied to the Appellant *vis-à-vis* both D1 and D2. The Appellant had caused the death of D1 and D2 with the clear intention of causing death. The Judge accordingly convicted the Appellant of both counts of murder under s 300(*a*) of the Penal Code.

The parties' arguments

The Appellant's case

27 As may be observed from the Appellant's version of events, the Appellant does not deny stabbing D1 and D2, thereby killing them. The crux of the Appellant's defence is that he did not intend to cause the deaths of D1 and D2. He alleges that his plan from the outset was to rob, not to kill. He had inflicted those injuries upon D1 and D2 only because both men had attempted to assault him.

28 D1 had at some point discovered the Appellant's ruse and that the CCTV camera the Appellant had asked D1 to place in the safe deposit box was a fake. D1 turned violent as a result and came at the Appellant with a knife. A struggle ensued and the Appellant managed to wrest the knife from D1. As D1 continued to pull at the Appellant, the Appellant swung the knife at D1 multiple times until D1's "body became soft". The Appellant alleges he was in fear of his safety and his paramount consideration was to get D1 off him so that he could run away.

29 In so far as D2 was concerned, D2 had charged at the Appellant upon witnessing the scene between the Appellant and D1. The Appellant instinctively retaliated by punching D2 without realising that the knife was still in his hand, and he ended up stabbing D2. D2 continued to punch and pull at the Appellant, and in response the latter swung his arms wildly at D2, thereby stabbing D2 further. The Appellant alleges that his immediate concern was to "run for [his] life", but D2 stood between him and the front door. He claims that as the pair struggled, all he wanted to do was to get D2 away from him.

30 As already noted above (at [1]), the Appellant challenges the convictions on the basis that his actions do not show an intention to cause death, but instead (assuming that one or more of the exceptions to murder under s 300 does not apply) reflect only an intention to cause injuries sufficient in the ordinary course of nature to cause death under s 300(*c*) of the Penal Code, an offence which does not attract the mandatory death sentence. As just alluded to, he also relies upon three different exceptions to murder under s 300 of the Penal Code (including s 300(*a*) and (*c*)), namely, (a) Exception 2 (exceeding the right of private defence); (b) Exception 4 (sudden fight); and (c) Exception 7 (diminished responsibility). In the event that one or more of these exceptions applies, the Appellant argues for the imposition of a sentence of 10 years' imprisonment under s 304(*a*) of the Penal Code. Finally, in the event that the court is of the view that the Appellant ought to be convicted under s 300(*c*) of the Penal Code instead, the Appellant argues for the imposition of a sentence of life imprisonment instead of the death sentence under s 302(2) of the Penal Code.

The Prosecution's case

31 The Prosecution submits that the Appellant had planned all along to kill D1 in order to get away with the money and ensure that he would not be identified. To this end, the Appellant had brought the knife along with him. The Appellant's story that D1 had discovered the Appellant's trickery and had attacked him with a knife is simply untrue as there was nothing that would have led to D1 uncovering the truth. Further, the knife wounds inflicted by the Appellant on D1 clearly speak of his intention to kill D1.

32 In so far as D2 was concerned, the Prosecution submits that the Appellant had no choice but to kill D2 in order to silence him. The intention to kill D2 was formed there and then, or just before D2's arrival at D1's house, and this is evidenced by the injuries inflicted by the Appellant upon D2.

33 The Prosecution further argues that Exceptions 2 and 4 to s 300 of the Penal Code do not apply as the circumstances did not give rise to the right of private defence of the body on the part of the Appellant and there was no sudden fight and/or quarrel. The Appellant was also not suffering from any mental illness at the time of the offences as opined by the Prosecution's psychiatrist, Dr Jerome Goh Hern Yee ("Dr Goh"), in his reports dated 5 September 2013 ("Dr Goh's 2013 Report") and 21 September 2016 ("Dr Goh's 2016 Report"). Exception 7 to s 300 of the Penal Code is thus not available to the Appellant.

Our Decision

34 We stress at the outset that it is not strictly necessary for the Prosecution to prove beyond a reasonable doubt that the Appellant had planned to kill either or both victims from the beginning. It is well-established

that the intention to cause death under s 300(*a*) of the Penal Code need not be pre-planned or premeditated, and can be formed on the spur of the moment, just before the actual killing takes place. If, of course, it can be shown that the Appellant had planned to kill both victims all along, then the intention to cause the deaths of the victims at the time of the killing would be established in an *a fortiori* fashion (see, for example, the Malaysian Court of Appeal decision of *Ismail Bin Hussin v Public Prosecutor* [1953] MLJ 48, adopted by this court in *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 422 at [64]). But the converse is not true. Even if the Appellant had no premeditated plan to kill D1 and D2, he would still be equally guilty of murder under s 300(*a*) of the Penal Code if it can be shown beyond a reasonable doubt that the Appellant had the intention to cause the deaths of D1 and D2 *at the time of the killing*. This is the central question before the court. To answer this question, the court must determine, as a matter of fact, what had transpired in D1's house. As is common with many cases of murder, the only person who can shed light as to what occurred during the moments leading to the death of the victims is the Appellant himself. We therefore now turn to examine the Appellant's story in greater detail.

Conviction in respect of D1

Whether the Appellant had intended to cause the death of D1

35 The Appellant admits that he had intended to and did cause the injuries suffered by D1 which led to the latter's death. His case is that he did not *intend* to kill D1 and was merely trying to *defend* himself against D1's assault on him with the knife. According to the Appellant, after he told D1 that they had to return to CISCO, D1 walked to the kitchen and used the telephone there. When D1 came out of the kitchen, D1 told the Appellant that the CCTV camera did not contain any batteries and accused the Appellant of cheating

him. D1 then assaulted the Appellant with a knife. It is apparent that the Appellant's case is *predicated* upon the court believing his version of events, *ie*, that D1 discovered the Appellant's deception and came at him with a knife. The fundamental problem with the Appellant's case, however, is that it does not provide a reasonable explanation as to how D1 could have discovered the Appellant's ruse or that the CCTV camera was a fake, and why D1 would turn violent as a result and attack the Appellant with a knife.

36 We reiterate what had happened when D1 met with the Appellant at the petrol station near CISCO. The Appellant had passed the dummy CCTV camera (which was placed in a box) to D1 and instructed him to remove his belongings from the safe deposit box and place the camera in it. D1 dutifully complied with the Appellant's instructions. CCTV cameras in CISCO captured D1 removing the contents from his safe deposit box and attempting to place the box containing the dummy camera in the safe deposit box. However, as the box and camera could not fit into the safe deposit box, D1 returned to the Appellant with the camera. The Appellant then instructed D1 to try placing the camera without its box in the safe deposit box. Again, D1 dutifully carried out the Appellant's instructions. This time, D1 was successful and he returned to the Appellant carrying cash in excess of $600,000, which he kept inside the orange bag. The Appellant then offered to escort D1 home as the latter was carrying a lot of money and D1 agreed. The two then proceeded to D1's house together in D1's car.

37 In our judgment, the *only* reasonable inference that can be drawn from what transpired at the petrol station near CISCO is that D1 had trusted the Appellant and believed that he was participating in a "sting" operation conducted by the Appellant and the police. There is nothing to indicate that D1 was or became suspicious of the Appellant. If D1 knew that the CCTV camera

was a fake, or that the Appellant was trying to cheat him, it made no sense for D1 to have complied with the Appellant's instructions and attempt to place the dummy CCTV camera in the safe deposit box. The fact that he went back to CISCO a second time after he failed to place the box containing the dummy CCTV camera in his safe deposit box the first time confirms that he had found nothing amiss. Furthermore, when D1 returned after the second visit to CISCO, he was carrying a substantial sum of money. Yet, he permitted the Appellant to "escort" him home and even invited the Appellant into his home and served the Appellant a drink. All these facts lead to the inexorable conclusion that up to the time when D1 arrived at his house with the Appellant, D1 was comfortable with the Appellant and did not harbour any reservations as to the entire operation. Even if D1 did realise that the CCTV camera did not contain batteries, he must have either not thought much of it or he was satisfied with whatever explanation the Appellant had given him. Indeed, counsel for the Appellant, Mr Wendell Wong ("Mr Wong"), was unable to suggest any other reasonable inference that might be drawn from the foregoing facts.

38 For D1 to have assaulted the Appellant subsequently as the Appellant alleges, something must have happened in the interim to displace D1's state of comfort with the Appellant such that it became discomfort and, finally, certainty that the Appellant had cheated him. In this regard, Mr Wong relied on three facts to demonstrate that D1 had become suspicious of and/or had known that the Appellant was tricking him. The first is a call from D1 to his friend, Roland Soh Chee Meng ("Roland"), at approximately 3.12pm on 10 July 2013. The second is that the Appellant hid the orange bag containing the money. The third is the two calls from D1 to his son, D2, at approximately

3.21pm and 3.28pm on 10 July 2013 respectively. We will deal with each of these facts in turn.

39 In so far as the call to Roland is concerned, Roland's evidence was that D1 spoke very quickly and appeared to be in a rush to hang up. According to Roland, he felt something was amiss as D1 had never spoken to him in such a rushed manner before. In our judgment, the call to Roland and Roland's evidence does not assist the Appellant. All that this tells us at best is that D1 appeared to be speaking very quickly and was in a rush to hang up. This is entirely to be expected considering D1 believed he was involved in a "sting" operation. Furthermore, D1 and Roland were good friends. If D1 was anxious or felt threatened, one would have expected him to tell Roland that. Instead, D1 informed Roland that he would be back at the workshop soon and hung up. We also note that a few minutes thereafter, at 3.15pm, D1 called another friend, Oh Chye Huat ("Chye Huat"), to inform Chye Huat that he was engaged at the moment and would be late returning to the workshop. Likewise, there was no mention of any concern by D1. In fact, the content of D1's conversations with Roland and Chye Huat explains why D1 would sound like he was in a hurry – there were two persons waiting for him at his workshop and he was in a hurry to get there. In our view, after the call to Chye Huat, the Appellant was still in a state of comfort *vis-à-vis* the Appellant. There was nothing Roland or Chye Huat said that would have caused D1's state of mind to change and put him on alert.

40 The fact that D1 hid the orange bag containing the contents of the safe deposit box also does not assist the Appellant. Mr Wong submitted that since D1 was under the impression that he was in the company of a law enforcement agent, he was therefore in his comfort zone, and there would be no necessity to rush to hide the bag unless something had intervened to raise D1's suspicions.

We do not agree. The orange bag contained a very substantial amount of cash. The most basic level of precaution any reasonable person would take is to not leave the bag out in plain sight, even if one were in his own home. Furthermore, it was not as though D1 had locked the bag away. He simply stashed it in the storeroom out of plain sight. In the context of somebody who locks his cash in a safe deposit box in CISCO, it is not that unusual for D1 to have placed the bag in a less conspicuous place, even if he were comfortable with and trusted the Appellant.

41 This leaves us with the third fact relied upon by Mr Wong, *ie*, the calls to D2. It was suggested that D1 could have discovered the camera was a fake and/or the Appellant's scheme through his conversations with D2 over the phone, and this was why D2 allegedly left his office and drove to D1's house that fateful afternoon. However, Vivien Ong Chew Fei ("Ms Ong"), one of D2's employees, recalled that when D2 left the office that day shortly after answering a call at around 3pm, D2 "appeared to be normal and even smiled at [her] before he left" and had told Ms Ong to "take care of the office for a while". D2 also left the lights in his office switched on which, according to Ms Ong, he would not normally do unless he intended to return in a short while. Furthermore, according to the footage of the CCTV camera belonging to 14H Hillside Drive, D1's neighbour's house, D2 was captured walking normally into D1's house. This would not be the behaviour one would expect of a son who just discovered that there was an impostor in the house who was attempting to cheat his father. In our judgment, Ms Ong's evidence and the CCTV footage from the neighbour's house are *inconsistent* with any suggestion that D1 and D2 had through their telephone conversations discovered the Appellant's deception.

42 We add that there appears to be a very good and innocuous reason why D2 went home that afternoon in a calm fashion. As the Judge had found at [86] of the Judgment, D2 was likely going home to help D1 with any statement D1 might potentially have to give to the Appellant or his "partner". After all, the Appellant had informed D1 that he would have to record D1's statement after his "partner" arrived. D1's wife, Mdm Ong Ah Tang ("Mdm Ong"), gave evidence that because D1 was not conversant in English, he would typically ask D2 or his daughter for help in translation whenever he received calls or letters. D2's office was also very close to D1's house.

43 There is therefore no evidence of anything that had occurred from the time D1 and the Appellant entered D1's house (at which point D1 remained trusting of the Appellant (see above at [37])) that could have caused D1 to become suspicious of the Appellant and eventually convinced that the Appellant was trying to deceive him. In our judgment, even if D1 had somehow uncovered the Appellant's scheme, it is simply unbelievable that he would have become so enraged that he would attack the Appellant with a knife. According to Mdm Ong, D1 was not a violent person. Furthermore, D1 must have known it would not have been an even fight. He was a 67-year-old man with a chronic knee problem while the Appellant was a relatively younger 34-year-old, who up to that point D1 believed was a police officer performing his duties. It would have been a simple matter for D1 to have either waited for his son to return or called the police. We therefore reject the Appellant's story that D1 had at some point discovered his ruse and assaulted him with a knife as a result.

44 We make one further observation. We note that there are some discrepancies in the Appellant's statements to the police and to Dr Goh in 2013 in respect of *when* D1 allegedly attacked him. This must be contrasted

with how consistently the Appellant had recounted the rest of his version of events. According to the Appellant, after he came back from smoking outside the house, he had asked to use the toilet. D1 then showed him the toilet.

(a) In his first statement to the police dated 13 July 2013, the Appellant said that *when he came out of the toilet and started walking to the orange bag, D1 attacked him straight away* with a knife and accused the Appellant of cheating him.

(b) In his second statement to the police dated 21 July 2013, the Appellant said that *when he came out of the toilet, he noticed the orange bag was missing*. He *panicked and noticed D1 using his mobile phone in the living room*. He then decided to *concoct a story* about how the safe deposit box had been opened again and that they should therefore hurry back to CISCO. He also *told D1 to bring the orange bag. D1 then went into the kitchen and used the telephone*. When *D1 emerged from the kitchen, he "came at [the Appellant] with a knife"* and accused the Appellant of cheating him.

(c) In Dr Goh's 2013 Report, it was recorded that the Appellant had said that when he came out of the toilet, he noticed the orange bag was missing and was shocked. He saw D1 using his mobile phone in the living room. He then told D1 that someone had opened his safe deposit box and that the latter should take the orange bag and put everything back into the box. D1 took a *different plastic bag and returned to his car, saying that he wanted to go back to his workshop*. Then, D1 went into the kitchen to use a corded phone. D1 then emerged from the kitchen and came at him. D1 accused the Appellant of cheating him, and walked towards the Appellant. Only when D1

was very near the Appellant and raised his hand did the Appellant notice D1 holding a knife.

We emphasise that these inconsistencies are certainly not conclusive in and of themselves. However, they reinforce to some extent our rejection of the Appellant's argument that D1 had attacked the Appellant with a knife. It is also pertinent that these inconsistencies relate to the period immediately preceding D1's alleged attack on him, as opposed to the periods during or after the attack. While the Appellant's memory of the latter might be hazy given how quickly events unfolded, it is less likely to be so for the former.

45 It is clear, in our view, that if the Appellant is unable to persuade this court that D1 had discovered his ploy, turned violent and assaulted him with a knife, the Appellant's defence *vis-à-vis* D1 would have no legs left to stand on. There is no alternative case put forward by the Appellant. As mentioned above, the Appellant is the only person who can shed light on what happened in D1's house in the moments leading up to the killing. If the Appellant's evidence is disbelieved, the only evidence that is left before the court is his admission that he intended to and did cause the injuries suffered by D1. In our view, the overwhelming number and severity of the wounds inflicted by the Appellant to vulnerable parts of D1's body demonstrate, in and of itself, an *intention* to cause death. The Appellant admitted that he knew he was stabbing D1 at the neck. He could not remember how many times he stabbed D1 but only stopped when D1's body had become soft. On the Appellant's own evidence, D1 was unarmed for the most part and the Appellant suffered few injuries. Even if there was a struggle and the Appellant had instinctively stabbed D1, he could have stopped after the first (or even second) stab. Yet, he proceeded to stab and cut D1 22 more times at vulnerable parts of D1's body. Given our finding that D1 did not attack him, there was no reason for the

Appellant to have been so vicious in his assault on D1 other than to kill D1. His explanation that he only wanted D1 to loosen his grip on him and that he had stabbed D1's neck because that was the only area he could stab is simply unbelievable. The fact that the Appellant had used his left hand to muzzle D1's mouth when D1 started crying out after being stabbed is also incongruous with any intention to merely disable D1's grip on him. In the circumstances, we find that the Appellant *intended* to cause the death of D1 at the time of the killing.

46 For completeness, we address one contention heavily relied upon by the Appellant, *viz*, that the Prosecution has not proven beyond a reasonable doubt that the Appellant had brought the knife with him. The Appellant argues that it was possible that the knife came from D1's house as there were old knives stored in a drawer in the kitchen and in the shed where D1 kept his fishing gear that D1's wife, Mdm Ong, did not keep a count of. She thus could not confirm that there were no knives missing from those locations (although she confirmed that there were no knives missing from the kitchen counter beside the sink). In our view, where the knife originated from is *immaterial* to the appeal. It is undisputed that the Appellant had used *that* knife to inflict the injuries on D1 (and D2), and if the Appellant had the intention to cause death at the material time, then that is the end of the matter. Simply raising the *possibility* that the knife could have originated from the house does not have any impact on our finding that the Appellant has failed to prove D1 turned aggressive and attacked the Appellant.

47 In fact, we note that it is equally possible that the Appellant had brought the knife along with him. Mdm Ong, who was familiar with the number of knives on the kitchen counter, confirmed that there were no knives missing from the kitchen counter. If the knife originated from D1's house, the

Appellant (or D1 for that matter) would have grabbed it from the knives displayed on the kitchen counter where it was most readily accessible. There was no reason why the Appellant (or D1) would have opened the kitchen drawer and/or the shed and rummage through it in order to obtain the knife. Furthermore, it was not impossible for the Appellant to have concealed the knife while he was with D1. According to the Appellant's own description, the knife was not a big one and could have fit into a pocket. In any event, as mentioned above at [46], whether the knife came from the house or was brought along by the Appellant is immaterial. What remains incontrovertible is that the Appellant had used the knife to cause the death of D1, and the Appellant has not been able to prove that he had done so because D1 flew into a rage and assaulted him with that knife.

48 In the circumstances, we find that an offence of murder under s 300(*a*) of the Penal Code in respect of D1 is made out. We now turn to consider whether the Appellant is nevertheless entitled to raise Exceptions 2 and 4 to s 300 of Penal Code. If he is able to do so, he would be punished under s 304 of the Penal Code, under which the maximum punishment is life imprisonment and caning, instead of s 302(1) of the Penal Code, which carries the mandatory death penalty.

Exception 2 – Exceeding the right of private defence

49 Exception 2 to s 300 of the Penal Code provides as follows:

> *Exception 2.*— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

50 To satisfy Exception 2, the Appellant must prove on a balance of probabilities the following elements (see this court's decision in *Soosay v Public Prosecutor* [1993] 2 SLR(R) 670 at [29]):

(a) The right of private defence has arisen;

(b) The right was exercised in good faith;

(c) The death was caused without premeditation; and

(d) The death was caused without any intention of doing more harm than was necessary for the purpose of such defence.

51 In respect of the first element, this court in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 ("*Tan Chor Jin*") held that two preconditions must be satisfied before the right of private defence arises in respect of the accused's own body (at [39]):

(a) The person purporting to exercise the right of private defence ("the defender") must have been the subject of an offence affecting the human body; and

(b) The defender must have attempted to seek help from the relevant public authorities if there was a reasonable opportunity for him to do so.

52 Given our finding that the Appellant has failed to prove that D1 attacked him with a knife, the Appellant has likewise failed to show that he had been the subject of an offence affecting his body. The Appellant has not put forward any alternative case other than that D1 attacked him. In the

circumstances, we are of the view that the right of private defence had *not* arisen *vis-à-vis* D1.

53 In any event, even if we were to accept that D1 did attempt to attack the Appellant with a knife, we are of the view that the Appellant did not attempt to seek help from the relevant public authorities despite there being a reasonable opportunity for him to do so. As noted above at [43], D1 had a chronic knee problem which impeded his movement significantly. According to Mdm Ong, when D1 climbed steps or made big movements, he had to hold onto something for support and balance. Between February 2011 and July 2013, D1 consulted two orthopaedic surgeons, both of whom diagnosed him with severe or end-stage osteoarthritis of the left knee. One of them, Dr Kevin Lee, described D1 as walking with a "significant limp" and opined that the speed at which D1 would be able to charge at somebody was "very, very limited". When asked if D1 would have been able to run or charge down the flight of steps connecting the kitchen to the living room unassisted, Dr Kevin Lee's reply was "not without falling down first".

54 According to the Appellant, he first saw D1 armed with a knife when D1 was "at the steps area". At that particular point in time, the Appellant was standing near the organ in the living room. Considering D1's knee condition, which the Appellant must have noticed previously, this put plenty of space between D1 and the Appellant for the latter to have turned around and run out of the house to seek help. Instead, the Appellant chose to stay and wrestle with D1, and when he managed to gain control of the knife, he brutally stabbed D1 in vulnerable areas multiple times. In our view, the injuries the Appellant inflicted on D1 also demonstrate that the Appellant had an intention to do more harm than was necessary for the purpose of any alleged defence.

55 In the circumstances, the Appellant is *not* entitled to rely on Exception 2 to s 300 of the Penal Code.

Exception 4 – Sudden fight

56 Exception 4 to s 300 of the Penal Code provides as follows:

> *Exception 4.*— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

57 In *Tan Chun Seng v Public Prosecutor* [2003] 2 SLR(R) 506 ("*Tan Chun Seng*"), this court identified three main ingredients which prompt the operation of this partial defence (at [16]):

(a) Sudden fight in the heat of passion upon a sudden quarrel;

(b) Absence of premeditation; and

(c) No undue advantage or cruel or unusual acts.

Whether or not there was in fact a sudden fight in any given case depends on the unique factual matrix of the case (see *Tan Chun Seng* at [21]). We have already found that the Appellant has not shown that D1 had attacked him with a knife. As this is the only case put forward by the Appellant, he has failed to prove on a balance of probabilities that there was a sudden fight between him and D1. He is thus *not* entitled to rely on Exception 4 to s 300 of the Penal Code either.

Conviction in respect of D2

Whether the Appellant intended to cause the death of D2

58 As was the case with D1, the Appellant admits that he had intended to and did cause the injuries suffered by D2 which led to the latter's death. If it can be shown beyond a reasonable doubt that the Appellant had an intention to *kill* at the time he caused those injuries, he would be guilty of an offence under s 300(*a*) of the Penal Code. We set out again what the Appellant alleges had happened *vis-à-vis* D2.

59 The Appellant's case is that when he was lowering D1's body down on the floor after D1's "body became soft", D2 appeared at the doorway of the house. D2 shouted "Pa!" and charged at the Appellant with clenched fists. D2 swung his right fist at the Appellant, which the Appellant blocked. The Appellant intended to retaliate by punching D2 with his right hand, but failed to realise that the knife was still in his hand, and he ended up stabbing D2 in the neck or face area. D2 continued to punch and pull at the Appellant, and the latter swung his arms wildly, thereby stabbing D2 further. The Appellant alleges that he was not aiming the knife at any particular part of D2's anatomy, and that all he wanted to do was to get D2 away from him so that he could escape from D1's house.

60 We find the Appellant's claim that he did not realise the knife was still in his hand to be an incredible one. He must have known that he was still gripping the knife, and we find that his intention was to injure D2 with it. Even if his claim is to be believed, the Appellant should have realised the knife was in his hands after the first stab. Yet, as the Appellant admits, he proceeded to stab D2 in the neck a few more times. In fact, the Appellant cut and stabbed D2 a total of 16 more times. While the Appellant claims that he

was not aiming for any particular part of D2's body, all of the 17 knife wounds inflicted on D2 were to the face, neck and scalp. The congregation of injuries to these *vulnerable* parts of D2's body shows that the Appellant's attacks on D2 were *targeted*. Coupled with the *sheer number* of times he had stabbed and cut D2, in our judgment, the Appellant must have *intended* to cause D2's death. As the Judge pointed out, D2 was much lighter than the Appellant and could not have been so menacing and strong that the Appellant, while armed with a knife, had to retaliate with such ferocity and brutality (at [88] of the Judgment).

61 There was some dispute as to whether the Appellant knew that D2 had collapsed on the driveway after running out of D1's house and whether the Appellant had intentionally run over D2. In our view, this is *not* critical to the appeal. Dr Lau's evidence was that the stab wound to D2's neck was so severe that D2 would have been dead or on the brink of death before his body was dragged by the car. Given our finding that the Appellant had intended to kill D2 as he caused those injuries to the latter, we are of the view that an offence of murder under s 300(*a*) of the Penal Code *vis-à-vis* D2 is made out. We now turn to the Exceptions.

Exception 2 – Exceeding the right of private defence

62 It may be the case that D2 had charged at the Appellant with clenched fists. But it must be remembered that D2 had just witnessed the Appellant lowering his father's limp and bloodied body on the floor. Furthermore, the Appellant, who was much heavier than D2, was still holding on to the knife at the time. It would have been only natural for D2 to try to apprehend the Appellant and defend his father, D1. We agree with the Judge's finding that in such a situation, if there was any right of private defence to be exercised, that

right would belong to D2 and not the Appellant (see the Judgment at [86]). The Appellant was clearly the aggressor in this case. As the Court of Appeal in *Tan Chor Jin* noted (at [46(c)]):

> (c) *If the defender was the aggressor at the material time, it is* prima facie *less likely that he had a right of private defence* (*cf* the Indian position, which seemingly makes no room at all for a defender/aggressor to invoke this right (see [44] above; see also The Indian Penal Code at p 411)). Much would depend on the factual matrix of the case: if, *for instance the defender was armed with a deadly weapon from the outset, it is very unlikely that the right of private defence would ever arise.* [emphasis added]

63 In any event, the manner in which the Appellant viciously attacked D2 with the knife demonstrates that he had intended to do more harm than was necessary for the purpose of any alleged self-defence. In our judgment, the Appellant is *not* entitled to rely on Exception 2 to s 300 of the Penal Code in respect of D2.

Exception 4 – Sudden fight

64 In determining whether the partial defence of sudden fight is available to the Appellant *vis-à-vis* D2, the guidelines identified by this court in *Tan Chun Seng* at [21] are apposite. The court would typically look at:

(a) Whether the fight and injuries suffered by the deceased were premeditated by the accused;

(b) Whether the accused was armed with the relevant weapon before the fight began; and

(c) Whether, during the fight, the accused had reason to resort to a weapon – *ie*, here the courts have placed substantial emphasis on the disparity of size between the deceased and the accused.

65 In the present case, the Appellant was armed with the knife before any alleged sudden fight began. The Appellant was also heavier than D2. Even if D2 had charged at the Appellant, there was no reason for the Appellant to have resorted to stabbing and cutting D2 in *vulnerable* areas with the knife *so many times*. The Appellant had clearly taken undue advantage of and acted in a cruel manner towards D2. In the premises, the Appellant is likewise *not* entitled to rely on Exception 4 to s 300 of the Penal Code in respect of D2.

Exception 7 – Diminished responsibility

66 We now turn to the last line of the Appellant's defence, *viz*, Exception 7 to s 300 of the Penal Code. If the Appellant is unable to prove on a balance of probabilities the partial defence of diminished responsibility under Exception 7, he would be guilty of two offences under s 300(*a*) of the Penal Code for the murder of D1 and D2.

67 We note at the outset that the Appellant never relied on the partial defence of diminished responsibility at the trial below. This is unsurprising given that only the prosecution's psychiatrist, Dr Goh, had examined the Appellant in 2013, and Dr Goh had opined that the Appellant was not suffering from any mental illness at the time of the offences. The Appellant was content to not call his own psychiatrist. Indeed, counsel for the Appellant at the trial below stated that he was willing to accept Dr Goh's 2013 Report and that it was not negative to the Appellant's case. The Appellant's counsel further indicated that he wanted to rely (and did rely) on Dr Goh's evidence. In such circumstances, we find it highly unsatisfactory for the Appellant to seek to adduce a fresh psychiatric report produced three years after the offences were committed and to rely on a new exception for the first time in this appeal. Not only is the court deprived of the benefit of cross-examination

of the Appellant's psychiatrist, the fact that the Appellant alleges he had a mental condition at the material time so late in the day would call into question the genuineness of his defence. Accused persons do themselves a disservice by adopting such a drip-feed approach to their defence. Accused persons should and are expected to put their best case forward at the earliest time possible. Indeed (and particularly after the observations that have just been made), this court might exercise its discretion to reject such drip-feed applications in the future.

68 Turning to the criminal motions filed in the present appeal, we deal first with CM 17/2016, the Appellant's application for leave to adduce Dr Lee's Psychiatric Report.

CM 17/2016

69 Dr Lee assessed the Appellant on three occasions, *viz*, 15 and 24 June 2016 and 27 July 2016, and produced a report, *ie*, Dr Lee's Psychiatric Report. Based on the information provided to him, Dr Lee opined that the Appellant suffered from *adjustment disorder with mixed anxiety and depressive reaction* between mid-2012 to mid-2013. In his view, the Appellant also developed *acute stress reaction* during the offences where there were violent struggles, which is an acute reaction to a crisis characterised by "autonomic, dissociative, mental and bodily symptoms". These "abnormal mental states" of the Appellant were present at the time of the offences and contributed significantly to the multiple stabbing of D1 and D2. Dr Lee was also of the view that the abnormal mental states were important causal factors of the offences and substantially impaired the Appellant's behavioural and psychological state during the offences.

70 In response to Dr Lee's Psychiatric Report, Dr Goh, who had previously assessed the Appellant in 2013 and produced a report dated 5 September 2013, *ie*, Dr Goh's 2013 Report, filed an affidavit exhibiting a response report, *ie*, Dr Goh's 2016 Report. In Dr Goh's 2016 Report, he disagreed with Dr Lee's opinion that the Appellant suffered from adjustment disorder and acute stress reaction. He opined that the Appellant *did not* suffer from any mental illness at the time of the commission of the offences. This was the same opinion Dr Goh had expressed in his 2013 Report.

71 On 12 October 2016, Dr Lee produced a report in response to Dr Goh's 2016 Report ("Dr Lee's Response Report") (exhibited in the Appellant's Affidavit dated the same). In Dr Lee's Response Report, Dr Lee maintained his diagnosis of the Appellant. He alleged that Dr Goh's conclusions were based on incomplete information, and that Dr Goh had failed to give due consideration to important *new* information the Appellant provided to Dr Lee in 2016.

72 The principles governing the admission of fresh evidence in a criminal appeal are set out in the Singapore High Court decision of *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*"). Chao Hick Tin JA in *Soh Meiyun* favoured the less restrictive approach adopted by this court in *Mohammad Zam bin Abdul Rashid v Public Prosecutor* [2007] 2 SLR(R) 410, *ie*, that the three conditions in the leading English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 of "non-availability", "relevance" and "reliability" applied, but that the first condition of "non-availability" was less paramount than the other two conditions. The consequence is that (see *Soh Meiyun* at [16]):

> … an appellate court exercising criminal jurisdiction should generally hold that additional evidence which is favourable to

> the accused persons and which fulfils the *Ladd v Marshall* conditions of relevance and reliability is "necessary" and admit such evidence on appeal.

73 The principal objection the Prosecution takes in respect of the admission of Dr Lee's Psychiatric Report is that the report is based primarily on the Appellant's *self-reported* information to Dr Lim in 2016, which substantially differed from what the Appellant had told Dr Goh in 2013, and is thus not reliable. It must be remembered that at the leave stage, the court is only concerned with the *reliability* of the report and is *not* assessing the *merits* of the report. When assessing the reliability of new evidence sought to be adduced on appeal, the court is only concerned with whether the evidence is such as is *presumably to be believed, ie*, *apparently credible*, although it *need not be incontrovertible* (see *Soh Meiyun* at [14]).

74 In our view, Dr Lee's Psychiatric Report is apparently credible. First, it must be noted that Dr Lee's Psychiatric Report appears to contain Dr Lee's independent, truthful and professional opinions, which are based on information the Appellant provided him and other relevant documents such as the Appellant's statement to the police dated 21 July 2013, Dr Goh's 2013 Report, the Appellant's previous medical reports as well as the Appellant's staff appraisal report. Dr Lee is a qualified psychiatrist registered with the Singapore Medical Council and an accredited specialist in psychiatry with the Ministry of Health. He previously held positions such as Senior Consultant Psychiatrist in Prison and various clinical appointments at the Institute of Mental Health. He has been an expert witness for the High Court before and is proficient in the "assessment of forensic psychiatric cases, violence risks … and use of structured assessment instruments".

75 Second, it is not true that Dr Lee's Psychiatric Report is based primarily on the Appellant's self-reported information. Dr Lee had considered, *inter alia*, Dr Goh's 2013 Report, his statement to the police, and the Appellant's staff appraisal reports for the years 2009–2012, and had made references to them in arriving at his conclusions. In so far as Dr Lee's Psychiatric Report is based on information that the Appellant provided to Dr Lee in 2016, which is different from what the Appellant told Dr Goh in 2013, this does not, *in and of itself*, render Dr Lee's Psychiatric Report unreliable. Indeed, the Appellant has sought to provide an explanation for the differences. The Appellant alleges that he felt uncomfortable sharing his feelings and problems with Dr Goh. When he answered Dr Goh's questions about his feelings and behaviour, he "told Dr Goh what he felt a Police Officer should be like when faced with stressors" and was "not describing himself as being unaffected". After reading Dr Goh's 2013 Report, the Appellant claimed he felt that Dr Goh had "totally misunderstood him". It may be the case that the Appellant's explanation and the new information he provided to Dr Lee are mere afterthoughts, but, in our view, this is a matter that goes to the *weight* that should be placed on Dr Lee's evidence and opinions. What remains undisputed is that the opinions contained in Dr Lee's Psychiatric Report are based on Dr Lee's *bona fide* and professional assessment of the Appellant.

76 In our judgment, Dr Lee's Psychiatric Report satisfies the requirement of "reliability" for the purposes of granting leave to adduce fresh evidence on appeal. We therefore allow CM 17/2016. We stress, however, that this does not mean that Dr Lee's evidence is to be preferred over Dr Goh's evidence. This is a question that goes to the respective merits of, and the weight that should be given to, each report, and it is to this question that we now turn.

Whether the Appellant may avail himself of Exception 7

The legal principles

77 Exception 7 to s 300 of the Penal Code provides as follows:

> *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.

78 As noted by this court in *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 ("*Ong Pang Siew*") at [57], Exception 7 was derived from s 2 of the English Homicide Act 1957 (Cap 11) ("the 1957 English Act") (both provisions are *in pari materia*). During the second reading of the Penal Code (Amendment) Bill (Bill 138 of 1961) *Singapore Parliamentary Debates, Official Report* (24 May 1961) vol 14 ("Second Reading of the Penal Code (Amendment) Bill"), Mr K M Byrne, the Minister for Labour and Law, stated that the effect of this defence is that (at cols 1509–1510):

> …where the [fact-finder] is satisfied that a person charged with murder, though not insane, suffered from mental weakness or abnormality bordering on insanity to such an extent that his responsibility was substantially diminished, the crime may be reduced from murder to culpable homicide.

79 There are three distinct requirements under Exception 7 which must be satisfied before an accused is entitled to rely on it (see the decisions of this court in *Ong Pang Siew* at [58] and *Public Prosecutor v Wang Zhijian and another appeal* [2014] SGCA 58 ("*Wang Zhijian*") at [50]):

> (a) The accused was suffering from an abnormality of mind ("the first limb");

(b) Such abnormality of mind ("the second limb"):

(i) Arose from a condition of arrested or retarded development;

(ii) Arose from any inherent causes; or

(iii) Was induced by disease or injury; and

(c) The abnormality of mind substantially impaired his mental responsibility for his acts and omissions in causing the death ("the third limb").

80 It is further well-established that whilst the second limb (otherwise known as the aetiology or root cause of the abnormality) is a matter largely to be determined based on expert evidence, the first and third limbs are matters which cannot be the subject of any medical opinion and must be left to the determination of the trial judge as the finder of fact (see for example, the decision of this court in *Chua Hwa Soon Jimmy v Public Prosecutor* [1998] 1 SLR(R) 601 at [21]; the Singapore High Court decision of *Public Prosecutor v Juminem and another* [2005] 4 SLR(R) 536 at [5]; as well as the decisions of this court in *Zailani bin Ahmad v Public Prosecutor* [2005] 1 SLR(R) 356 at [51] and *Ong Pang Siew* at [59]).

81 In respect of the first limb, what amounts to an "abnormality of mind" was defined by Lord Parker CJ, delivering the judgment of the court in the seminal English Court of Criminal Appeal decision of *R v Byrne* [1960] 2 QB 396 ("*Byrne*") (at 403):

> *'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the*

> *perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment.* The expression 'mental responsibility for his acts' points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts. [emphasis added]

82 The above definition in *Byrne* has been adopted by this court (see *Ong Pang Siew* at [61] and, more recently, *Wang Zhijian* at [64]). As was clarified in the Privy Council decision (on appeal from the Supreme Court of the Bahama Islands) of *Elvan Rose v The Queen* [1961] AC 496 ("*Rose v R*"), the defence is *not* limited to conditions on the "borderline of insanity" (affirmed in *Ong Pang Siew* at [62]). Thus, the court when examining whether there was an "abnormality of mind" must determine whether the evidence exists of the three possible manifestations contained in the *Byrne* definition (see above at [81]), *viz*, an abnormally reduced mental capacity to (a) understand events; (b) judge the rightness or wrongness of one's actions; or (c) exercise self-control (see Stanley Yeo, Neil Morgan, and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2nd Ed, 2015) ("*YMC*") at para 27.12). While the evidence of clinical experts will be relevant, this question is ultimately one of *fact* to be decided by the trial judge (see *Ong Pang Siew* at [59]).

83 If an "abnormality of mind" (*ie*, one of the three possible manifestations in the *Byrne* definition (see above at [81])) is proven on the evidence, the next question for the court is whether the "abnormality of mind" arose from or was induced by one of the prescribed causes in the second limb, *ie*, identifying the aetiology of the abnormality. We note that, as described by the learned authors of *YMC*, the causal descriptors in the second limb "have been the source of uncertainty and complexity in practice" (at para 27.21).

This is because the prescribed causes are notoriously difficult to define and apply. Not only are they capable of being interpreted in multiple ways, they appear to have no agreed upon meaning or definition among psychiatrists and/or other professionals. As observed by R D Mackay in *Mental Condition Defences in the Criminal Law* (Oxford University Press, 1995) (at pp 187–188):

> … the English courts have once again shown a marked reluctance to discuss the causes specified in the parenthesis [ie, the second limb] other than to confirm that medical evidence is 'a practical necessity if the defence is to begin to run at all' and that an abnormality arising from a cause other than one so specified will not satisfy the requirement of section 2. This reluctance most likely stems from the point already referred to in *Byrne*, namely that these bracketed causes are regarded as a matter upon which experts should pronounce and that therefore there is no need to subject them to judicial scrutiny. However, in her research, Dell found 'a great deal of variation in how the same conditions were classified by different doctors' and concluded:
>
> > *It is perhaps not surprising that doctors should vary among themselves in how they used the four specified aetiologies, for they have no defined or agreed psychiatric meaning, and the phrase 'inherent causes' in particular is obviously capable of being interpreted in many different ways.* More surprising was the fact that the reports frequently omitted any reference at all to the cause of the abnormality, thereby leaving the court without any written evidence as to the applicability of section 2(1).
>
> [emphasis added]

84 Some insight may be gleaned from the historical origins and the Parliamentary debates in respect of the second limb when s 2 of the 1957 English Act was introduced. According to Edward Griew, "The Future of Diminished Responsibility" [1998] Crim L R 75 (at 77–78), the second limb of Exception 7 had a "strange origin":

> The parenthesis in section 2(1) [of the Homicide Act, 1957], qualifying the phrase "abnormality of mind," has a strange

> origin. *It was a remarkably inept reconstruction of the definition of "mental defectiveness" in section 1(2) of the Mental Deficiency Act 1927* … [which] read: "a condition of arrested or incomplete development of mind existing before the age 18 years, whether arising from inherent causes or induced by disease of injury."
>
> In 1957 the same words are used [in the Homicide Act, 1957]; but their reorganisation drastically changes the function of the "whether …;" formula. [T]he phrase "whether arising from inherent causes or induced by disease or injury" in the [Mental Deficiency Act, 1927] seems plainly to mean "however arising or cause." *The 1957 parenthesis [in the Homicide Act, 1957], on the other hand, is intended for limitation rather than the avoidance of doubt. Not everything that might be called an "abnormality of mind" is to be capable of founding a diminished responsibility defence.* The items "inherent causes," "disease" and "injury," which need no explanation in the ...context of the [Mental Deficiency Act, 1927], thus acquire a crucial significance in [the Homicide Act, 1957]. *If the scope of the ...defence [of diminished responsibility] is to depend on careful reading of [s 2(1) of the Homicide Act, 1957], it becomes vital to know what kinds of causes are "inherent", what kinds of trauma will count as "injury" and what, indeed, is meant by "disease." None of these questions is easy or assured of a confident judicial answer. Yet these expressions are casually lifted from the [Mental Deficiency Act, 1927] into the [Homicide Act, 1957] without explanation, as though the two statues will employ "self-same definition" with the same clarity of effect.*
>
> [emphasis added]

85 At the second reading of the English Homicide Bill which introduced s 2(1) of the 1957 English Act, the Home Secretary, Major Gwilym Lloyd–George, noted that the new defence of diminished responsibility would be open to those "who, although not insane [under the test in *M'Naghten's Case* (1843) 10 Cl & Fin 200; 8 ER 718], are regarded in the light of modern knowledge as insane in the medical sense and those who, not insane in either sense, are seriously abnormal, whether through mental deficiency, inherent causes, disease or injury" (see House of Commons, *Parliamentary Debates* (15 November 1956) vol 560). He emphasised that the defence was only "intended to cover those grave forms of abnormality of mind which [might]

substantially impair responsibility" and was "not intended … to provide a defence to persons who are merely hot-tempered, or who, otherwise normal, commit murder in a sudden excess of rage or jealousy".

86 During the debates just referred to, there was some concern over the effect of the second limb, specifically, whether it was meant to limit the causes of abnormality of mind that would entitle an accused person to the defence, or whether it was merely meant to be illustrative. In response, the Attorney-General explained that the second limb was intended to (see House of Commons, *Parliamentary Debates* (27 November 1956) vol 561):

(a) Limit the defence to conditions "bordering on insanity" (this, however, has subsequently been clarified in *Rose v R* not to be the case);

(b) Give an indication to judge and jury of the kind of abnormality that is meant to enable a defence to run under this provision; and

(c) Exclude the mere outburst of rage or jealousy from the ambit of the defence.

This was subsequently confirmed by the Lord Chancellor when the Homicide Bill was debated in the House of Lords in March 1957 (see House of Lords, *Parliamentary Debates* (7 March 1957) vol 202).

87 It is apparent that the second limb, at least when s 2 of the 1957 English Act was introduced, was meant to be a limitation on when the defence of diminished responsibility would apply. The main aim was to "exclude the mere outburst of rage or jealousy from the ambit of the defence". In the Queensland Court of Criminal Appeal decision of *R v Whitworth* [1989]

1 Qd R 437, Derrington J described the purpose behind the second limb as follows:

> *The purpose of the reference by the legislation to these specific causes* of the relevant abnormality of mind is *to exclude other sources, such as intoxication, degeneration of control due to lack of self-discipline, simple transient, extravagant loss of control due to temper, jealousy, attitudes derived from upbringing and so on.* The feature which has most exercised the attention of the courts on this subject is the necessity to avoid the extension of the defence to the occasion where there is an abnormality of mind to the required degree and producing the required impairment, but where it is due only to personal characteristics which are not outside the control of the accused and which do not come within the nominated causes. … [emphasis added]

88 Unfortunately, not much was said in relation to the second limb when Exception 7 to s 300 of the Penal Code was introduced in Singapore. All that was mentioned by the then Minister for Labour and Law during the Second Reading of the Penal Code (Amendment) Bill was the following (at cols 1510–1511):

> The provision of the new Exception 7 to section 300 of the Penal Code … cover[s] mental abnormality whether induced by mental or physical disease or injury or arising from mental deficiency or other inherent causes. These words would appear to cover mental abnormality due to any form of insanity, to mental defectiveness, epilepsy, psycho neurosis arising from inherent causes and forms of psychopathic personality arising from arrested or retarded development of the mind. …

89 The Appellant has suggested that the prescribed causes under the second limb should be read broadly to include "any recognised medical condition contained in the international classificatory systems of mental conditions", *eg*, the World Health Organisation's International Statistical Classification of Diseases and Related Health Problems ("the ICD") or the American Psychiatric Association's Diagnostic and Statistical Manual of

Mental Disorders ("the DSM"). In the light of the foregoing discussion (above at [83]–[88]), this may be an attractive approach at first blush. However, in our judgment, the express wording of Exception 7 and the second limb is clear – the onus is still on the accused person to identify which of the prescribed causes is applicable in his case. Expert witnesses are thus well-advised to, on top of diagnosing whether the accused person was suffering from a recognised mental condition, identify which prescribed cause, if any, in their opinion gave rise to the accused's abnormality of mind. We note, however, that the wording of the prescribed causes do appear wide enough to include most recognised medical conditions.

90 In this regard, we observe that the second limb has been removed from the diminished responsibility defence in both England as well as in New South Wales. In 2009, s 2(1) of the 1957 English Act was amended to provide, instead, as follows:

> **Persons suffering from diminished responsibility.**
>
> (1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—
>
> (a) arose from a *recognised medical condition*,
>
> (b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
>
> (c) provides an explanation for D's acts and omissions in doing or being a party to the killing.
>
> (1A) Those things are—
>
> (a) to understand the nature of D's conduct;
>
> (b) to form a rational judgment;
>
> (c) to exercise self-control.
>
> (1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's

> conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.
>
> [emphasis added]

91 In support of these changes, the Royal College of Psychiatrists commented that these changes were in line with the "general nature and purpose" of the defence of diminished responsibility (reproduced in The Law Commission, *Murder, Manslaughter and Infanticide* (Law Com No 304, 2006) (Chairman: The Honourable Mr Justice Etherton) at para 5.114):

> *The presence of [a recognised medical condition] is, we believe, consistent with the general nature and purpose of 'diminished responsibility' as a defence* and would ensure that any such defence was grounded in valid medical diagnosis. It would also encourage reference within expert evidence to diagnosis in terms of one or two of the accepted internationally classificatory systems of mental conditions (WHO ICD 10 and AMA DSM) without explicitly writing those systems into the legislation. … Such an approach would also avoid individual doctors offering idiosyncratic 'diagnoses' as the basis for a plea of diminished responsibility. Overall the effect would be to encourage better standards of expert evidence and improved understanding between the courts and experts. [emphasis added]

92 In New South Wales, the second limb was removed altogether by amendments enacted in 1997. Section 23A of the New South Wales Crimes Act 1900 currently provides as follows:

> **23A Substantial impairment by abnormality of mind**
>
> (1) A person who would otherwise be guilty of murder is not to be convicted of murder if:
>
> > (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and
> >
> > (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.

93 The New South Wales Law Reform Commission stated the following observations regarding the second limb (New South Wales, Law Reform Commission, *Partial Defences to Murder: Diminished Responsibility* (Report 82, 1997) (Chairman: Michael Adams QC) at paras 3.39–3.40):

> 3.39 *One objection to the requirement to identify the aetiology (or cause) of an impairment is that it can lead to a great amount of disagreement amongst expert witnesses, who may not be able to nominate the origin of a condition with any certainty, or may disagree on the diagnosis of a particular offender. A second objection to this second element of the defence is that it gives rise to a great deal of complex, confusing and technical debate in an attempt to define each of the three terms listed and to fit a specific condition into one of the three.* The courts have developed quite complicated criteria to distinguish between the three causes. For example, where an accused relies on an "inherent cause", the condition must be shown to be permanent, though not necessarily hereditary, but when either disease or injury is relied on as the cause of the abnormality, it need not be permanent, although it must be more than ephemeral or of a transitory nature such as abnormality resulting from steroids, alcohol or drugs. Where an inherent cause is relied on, it is sufficient to prove that the accused suffered from an "inherent abnormality", without having to prove the cause of the abnormality as a separate element. However, where one of the other two causes is relied on, the cause must be established as a separate element from the abnormality. It is questionable whether any of these distinctions are logical or readily understood by juries.
>
> 3.40 It has been submitted to the Commission that the requirement to identify a specified cause adds unnecessary complexity to the defence, and that the three causes listed in parenthesis should simply be omitted in any reformulation of diminished responsibility. *The Commission agrees that the restriction of the defence to conditions arising from the three listed causes appears quite arbitrary and may generate a high level of complexity and confusion in relation to the expert evidence which is led in diminished responsibility cases.*
>
> [emphasis added]

Of course, whether Exception 7 to s 300 of the Penal Code should be similarly amended is a matter reserved solely for the Singapore Parliament to decide.

94 We return to the present case. In our judgment, *regardless* of which interpretation is given to the second limb, the Appellant has *not* proven on a balance of probabilities that he is entitled to invoke Exception 7 to s 300 of the Penal Code. This is because we prefer Dr Goh's evidence over Dr Lee's, and find that the Appellant was not suffering from any mental illness at the material time. Let us elaborate.

Assessment of the expert evidence

95 Dr Lee diagnosed the Appellant to be suffering from two main conditions at the time of the offences: (1) adjustment disorder, and (2) acute stress reaction. The parties do not dispute what these two conditions entail. Adjustment disorder is (in Dr Lee's words in Dr Lee's Response Report):

> … an abnormal response to a significant change or life event such as change of job, financial difficulties, changes in relationships. It is characterised by depressive, anxiety symptoms that are not enough to meet diagnosis of depressive or anxiety disorder. There [are] usually feeling[s] of inability to cope that are accompanied by angry outbursts.

Acute stress reaction is (again in Dr Lee's words in Dr Lee's Response Report):

> … an acute transient disorder that develops rapidly in a person in response to exceptional mental or physical stress. The symptoms are often varied with symptoms of dissociation (eg being dazed, seeing things in slow motion, seeing things from a third party, inability to recollect accurately), anxiety and mood symptoms.

96 Dr Lee's diagnosis of adjustment disorder is based on the Appellant's reporting of distress manifesting as anxiety, confusion, disturbed sleep, fear, depressed moods and cognitive disturbances. His diagnosis of acute stress reaction is based on the fact that the Appellant felt "dazed" during the offences, did not see the towels clearly present along the walkway, and had

inaccurate recollection of and inadequate explanation for the many stab wounds he had inflicted on the victims. In Dr Lee's opinion, these mental states of the Appellant "contributed significantly" to the stabbing of D1 and D2, and "substantially impaired his behavioural and psychological state during the offences".

97 In contrast, Dr Goh's 2013 Report diagnosed the Appellant to be of sound mind at the time of the alleged offences, in that he was aware of the nature of his actions and that they were wrong. He came to this view for the following reasons:

(a) The Appellant constantly denied the presence of any depressive or psychotic symptoms around the material time;

(b) Based on the Appellant's self-report, there was no discernible impairment in various domains of his functioning such as at work and his relationships with family and friends; and

(c) This was consistent with the Appellant's behaviour when Dr Goh examined him – he did not show any sign or symptom of mental illness.

98 In Dr Goh's 2016 Report, he disagreed with Dr Lee's diagnosis and maintained his own. From the report, it can be seen that his disagreement stemmed from the following reasons:

(a) Adjustment disorder:

(i) The psychiatric symptoms that Dr Lee relied on, *ie*, anxiety, confusion, disturbed sleep, fear, depressed moods and

cognitive disturbances, were not reported to him when he assessed the Appellant in 2013; and

(ii) Dr Lee took into account irrelevant factors, *eg*, the incongruences in sophistication between the Appellant's acknowledged abilities and the actual conduct of the offences, as well as the frequency of the Appellant's visits to a General Practitioner in July and August 2012.

(b) Acute stress reaction:

(i) The Appellant was able to furnish accounts of the offences to him in considerable detail in 2013, *eg*, describing the layout of the house, when D1 lunged at him with a knife, the Appellant's reactions *etc*;

(ii) The Appellant had no difficulty relating these accounts and was not distressed;

(iii) The Appellant's actions following the offences did not suggest he had acute stress reaction, *eg*, wrapping his bleeding hand with a towel and removing items which might identify him; and

(iv) There were other possible reasons why the Appellant does not have an "accurate recollection" of the offences now (almost three years after the offence), *ie*, the events had "happened very fast".

99 We prefer Dr Goh's diagnosis over Dr Lee's. We first highlight that Dr Goh's 2013 Report has the advantage of being more contemporaneous, and is consistent with the Appellant's self-assessment in his statement to the police

dated 23 July 2013 where he stated that he did "not have any health or mental related issues" and had "never felt a need to consult a psychiatrist or believe[d] [he was] suffering from a mental issue".

100 In respect of Dr Lee's diagnosis of adjustment disorder, it is clear that it is based primarily on the "new" psychiatric symptoms that the Appellant reported he had at the material time, *ie*, anxiety, confusion, disturbed sleep, fear, depressed moods and cognitive disturbances. In our judgment, however, these "new" psychiatric symptoms and the Appellant's explanation for why he kept them from Dr Goh are *mere afterthoughts*.

101 In his Affidavit dated 12 October 2016, the Appellant stated that he was reserved by nature and was uncomfortable opening up to Dr Goh. He was afraid that portraying his true emotions would damage the image of the SPF, something which he felt was "more important than what [he] felt". He was also concerned about any stigma that may be cast on his family if he were to be diagnosed with a mental illness. The Appellant was of the view that based on his answers to Dr Goh, the latter should have appreciated that the former was putting on a front. We do *not* accept the Appellant's explanation.

102 First, it is clear from Dr Goh's 2013 Report that the Appellant did *not* have an issue opening up to Dr Goh. As Dr Goh observed in his 2016 Report (at paras 10–12):

> 10. My 2013 report contained information the accused shared that showed this was not the case. The [accused] reported to me that that he "signed on" with the police force because he 'just like to help people" (page 2 paragraph 5), the reasons for his divorce (his wife's "affair", page 2 last paragraph), feeling pressurized to pay (page 4 paragraph 1) and details of his relationship with his girlfriend Nazurah (duration, "very good", the things they did together, page 3 paragraph 3) etc. These accounts were in fact shared during my first interview with him (on 30th July 2013). *He similarly*

> *shared other personal information in my subsequent interviews*, i.e. four or five intimate female partners (page 3 paragraph 2,), his problems (i.e. his debts, bankruptcy proceeding, police's disciplinary proceedings etc), and how he felt (i.e. "desperate" page 4 paragraph 7, "enriching" page 4 last paragraph, page 5 paragraph 3 and 4).
>
> 11. *The clinical notes of my interviews with the accused in 2013 further demonstrated that the accused was not constrained in discussing his "feelings and problems" from the onset.* On 30th July 2013, he spoke of his intimate relationships, described why his marriage ended and shared details of his relationship with one "Siti Aishah". He even described his personality as "easy going", and said he liked to go for "beach holidays" and "scenic holidays". He stated that he "felt pressurised to pay" his debts and that was why he "wanted to rob old man". He also referred to how he "fought" and "argued" with the bank as it had "miscalculated" the sums he owed to it. He described his relationship with "Nazurah" as "very good", and they would go out once a week to eat, watch movies and (do) "normal couple things".
>
> 12. *The accused's willingness to discuss "his feelings and behaviour" persisted in my subsequent interviews with him.* On 1st August 2013 when I asked how his transfer to the Operations Team affected him, he reported feeling "a bit sad" initially because he liked being an Investigation Officer. The accused said he did not dwell on being sad, however, and saw the transfer to "new environment" as a "silver lining", "so (he) move[d] on lah". He reported having four or five intimate female partners after he separated from his wife. He said he enjoyed spending time with his family and had no thoughts of guilt, worthlessness, or hopelessness before offences. He displayed a range of emotions appropriate to the contexts. He was emotional and cried when he spoke about what he thought would be the "final outcome".
>
> [emphasis added]

103 Second, the Appellant did not raise his alleged psychiatric symptoms or his discomfort with Dr Goh to anyone for the past three years. The Appellant's counsel at trial would have advised him of the various defences related to mental illness. Even if the Appellant's counsel had not, the Appellant admitted that he was aware of a mental health defence. Dr Goh's 2016 Report stated (at para 17):

> 17. *[The Appellant] was aware of a mental health defence and understood the purpose and significance of his forensic psychiatric evaluation then.* When he reported on 27th August 2013 that he did not have the above symptoms (see paragraph 14), I again advised him on the role of this forensic evaluation and again explained "why (I was) asking about psychiatric symptoms (in view of potential) mental health defence". He said he knew this and told me he "studied Diminished Responsibility"' for his Diploma. He went on to tell me that, "I am normal OK ... not mental problem then", and his defence (was) "not mental, more panic, more self-defence". I advised him that even then, his lawyer has to explore all defences, and reminded him that "if he has mental issues, the Courts, lawyers need to know as (it) may make a very material difference in sentencing outcome". [emphasis added]

If the Appellant felt that Dr Goh had misunderstood him, or that he had provided an inaccurate account of his mental state to Dr Goh because of an alleged discomfort with the latter, he should have raised it to his counsel at trial, and a separate psychiatrist would undoubtedly have been appointed to examine him. Yet, the Appellant was content to proceed on the basis of Dr Goh's 2013 Report. Further, the Appellant was facing two charges of murder under s 300(*a*) of the Penal Code when he was examined by Dr Goh. In such circumstances, we find the Appellant's alleged fear of damage to the reputation of the SPF and stigma to his family if he were diagnosed with a mental illness to be incredible and mere afterthoughts.

104 Accordingly, we place little or no weight on Dr Lee's diagnosis that the Appellant had adjustment disorder.

105 We turn to Dr Lee's diagnosis that the Appellant had acute stress reaction at the time of the offences. He based his diagnosis on the following account provided by the Appellant:

(a) When D1 attacked him with a knife, he panicked and his mind went blank;

(b) He was shocked to learn that he had stabbed D1 more than the two to three times which he thought he did;

(c) He was shocked to learn that he stabbed D2 twenty to thirty times;

(d) He did not see the injuries or the blood of D1;

(e) He was unable to explain why he had stabbed D1 and D2 so many times; and

(f) He proceeded straight to the toilet for a towel to wrap his wounded hand without noticing the other towels along the walkway to the toilet.

106 However, the Appellant's allegation that his mind went "blank" must be contrasted with the level of detail and specificity with which he was able to describe the alleged struggle with D1 and D2, not only to Dr Goh in 2013 (as noted in Dr Goh's 2016 Report at para 63), but also in his statements to the police – all of which were broadly contemporaneous accounts given by the Appellant himself. He could also remember specifically which areas of the victims he had stabbed. His allegation that he thought he stabbed D1 only two to three times is also inconsistent with his statement to the police dated 21 July 2013:

> 49 After I took the knife from him … *I began to stab him at his neck*. He started to shout "Ah…Ah…" and so I used my left hand to cover his mouth to stop him from shouting and he bit me. As I tried to pull my left hand away from his mouth, *I stabbed him a few more times at the neck area*. It was a struggle and I could only swing my arms towards the neck of the old man and stabbed him there.
>
> As I was stabbing him, I could feel his body jerking but he still had the strength to hold on to me. *He was grabbing on to my*

> *shirt and my arms as I continued to stab him at the neck. I do not remember how many times I stabbed him, I stopped only when his body became soft. …*
>
> [emphasis added]

107 While it is true that the Appellant could not remember the exact number of times he stabbed D1, this is unsurprising given the number of times he had stabbed D1 as well as how quickly the events unfolded. The same could be said about D2. The Appellant not noticing the towels along the way to the toilet is equivocal. It could well be the case that the Appellant had seen the towel in the toilet previously, and when he thought of grabbing a towel, he immediately homed in on it. We are therefore of the view that there is little factual foundation supporting Dr Lee's diagnosis of acute stress reaction and we place little or no weight on it.

108 In the circumstances, we prefer Dr Goh's evidence and find that the Appellant was not suffering from any mental illness at the time of the offences. We are therefore satisfied that the Appellant is not entitled to invoke Exception 7 to s 300 of the Penal Code.

CM 14/2016

109 It remains for us to deal with CM 14/2016. As mentioned above at [2], this is an application for leave to adduce Dr Ong's Pathology Report dated 13 July 2016. The Prosecution objects to the admission of Dr Ong's Pathology Report on the basis that it is not material to the issues on appeal. The report contained the following conclusions:

> (a) That it is more likely that the wounds on the Appellant were defence-type injuries rather than injuries inflicted upon himself during attempts to stab or incise the deceased victims;

(b) That it cannot be ascertained from the injuries alone that the knife used had a smooth or serrated blade despite the absence of unique marks associated with serrated blades; and

(c) That the blade of the knife could be shorter than the depth of the wound.

110 It is apparent from our findings above that Dr Ong's conclusions on the characteristics of the knife are immaterial to the appeal. Nothing turns on the length of the knife or whether it had a smooth or a serrated edge. Dr Ong's conclusions on the wounds to the Appellant's right hand may *appear* to support the Appellant's case that D1 had attacked him with a knife and the Appellant had used his right hand to block a blow from D1. However, given our finding (based on all the relevant evidence) that D1 did not attack the Appellant with the knife, these conclusions become immaterial. We also note that although Dr Ong opined that the injuries sustained by the Appellant are more consistent with "defence type [injuries] i.e. trying to block the blow and possibly trying to hold onto the blade", he also acknowledged that it was possible for the injuries to have been self-inflicted (though he qualified it by saying that it was only "remotely possible"). We therefore dismiss CM 14/2016.

Conclusion

111 We are therefore satisfied beyond a reasonable doubt that the Appellant had intended to and did cause the deaths of D1 and D2 and is guilty of both counts of murder under s 300(*a*) of the Penal Code. In the circumstances, we dismiss the appeal.

Sundaresh Menon Chief Justice	Chao Hick Tin Judge of Appeal	Andrew Phang Boon Leong Judge of Appeal

Wong Hin Pkin Wendell, Teo Ying Ying Denise, Bryan Wong (Drew & Napier LLC) and Terence Tan (Robertson Chambers LLC) for the appellant;
Lee Lit Cheng, Lau Wing Yum, Prem Raj Prabakaran and Mansoor Amir (Attorney-General's Chambers) for the respondent.
