IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 92

Criminal Case No 17 of 2019

Between

Public Prosecutor

And

Toh Sia Guan

GROUNDS OF DECISION

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

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Public Prosecutor
v
Toh Sia Guan

[2020] SGHC 92

High Court — Criminal Case No 17 of 2019
Aedit Abdullah J
6–8 August, 19–21 November 2019, 6, 12 February, 2 March 2020

6 May 2020

Aedit Abdullah J:

Introduction

1 The accused, Toh Sia Guan, was charged with murdering the deceased, Goh Eng Thiam, in the course of a fight in the Geylang neighbourhood,[1] pursuant to s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). He was convicted after trial and sentenced to life imprisonment. He has now appealed against both his conviction and sentence.

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[1] Prosecution's closing submissions dated 3 February 2020 ("PCS") at para 1

Background

The charge

2 The charge read that:[2]

> [The accused], on 9 July 2016, sometime between about 7.55 am and 7.57 am, at Lorong 23 Geylang, Singapore, did commit murder by causing such bodily injury as is sufficient in the ordinary course of nature to cause the death of one Goh Eng Thiam, and [he had] thereby committed an offence under s 300(*c*) and punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

3 The punishment prescribed under s 302 of the Penal Code was either death or imprisonment for life.

Agreed Facts

4 A Statement of Agreed Facts was signed by the parties under s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").[3] The material portions were as follows.

First information report

5 On 9 July 2016, at about 7:58 am, Mr Ong Yong Teck ("Mr Ong"), a taxi driver, informed the police via call that: there was a Chinese man (the deceased) standing at Lorong 23 Geylang with blood all over his body; he had a wooden pole with him; and another Chinese man (the accused) also with blood on his body was seen walking towards Lorong 21.[4] Paramedics arrived at about

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2 PCS at pp 1 to 2; Charge Sheet of 17 July 2019

3 Statement of Agreed Facts dated 31 July 2019 ("SAF")

4 SAF at p 2

8:09 am.[5] By that time, the deceased lay in a pool of blood with his head on the kerb.[6] A paramedic found that there was no pulse, he was not breathing and his pupils were dilated.[7] An electrocardiogram test performed on the deceased showed an asystole (a flat line); as such, the deceased was pronounced dead at 8:11 am.[8] The paramedic saw that there was a bloodied knife sheathed in its plastic cover ("the murder knife"), on the right side of the deceased, and a wooden stick ("the wooden stick") lying near his left leg.[9]

The first fight

6 At about 7:39 am that day, the accused encountered the deceased at Victoria Food Court at No 2 Lorong 23 Geylang.[10] The accused had stopped his bicycle near the food court where the deceased was sitting.[11] The accused thought the deceased was staring at him; to defuse the tension, the accused asked the deceased whether he sold Chinese medicine.[12] This made the deceased angry and he shouted Hokkien vulgarities at the accused.[13] A fight ensued (the "first fight"), and was captured by CCTV cameras, showing the time to be about 7:40 am.[14]

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5 SAF at para 5

6 SAF at para 5

7 SAF at para 5

8 SAF at para 5

9 SAF at para 5

10 SAF at paras 7 and 9

11 SAF at para 9

12 SAF at para 9

13 SAF at para 9

14 SAF at para 9

7 After the first fight, the accused went and bought a pair of slippers and the murder knife from a shop at No 43 Lorong 25 Geylang.[15] In the meantime, the deceased approached Wang Heng, an acquaintance of his, at the back of a restaurant at 9 Aljunied Road, to clean himself up, and also spoke on the phone with Yeo Kok Chong ("Yeo"), his flatmate.[16]

The second fight

8 Shortly after, the accused then returned to Lorong 23 Geylang where he encountered the deceased, and at about 7:55 am, another fight ensued between the accused and deceased (the "second fight"); this fight was again partly captured by CCTV cameras.[17] The accused left the scene at about 7:57:22 am, with his shirt bloodstained and wearing only one slipper.[18]

The accused's movement after the second fight

9 After leaving the scene, the deceased removed his bloodstained shirt and put on another shirt which he took from a clothesline in the area.[19] He then purchased slippers from a supermarket.[20] He left the Geylang area and did not return there.[21] Twelve days later, he was arrested at Labrador Park MRT station, following a sighting in the area.[22]

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15 SAF at para 12

16 SAF at paras 3, 7 and 12

17 SAF at paras 13 to 14

18 SAF at para 14

19 SAF at para 18

20 SAF at para 18

21 SAF at para 18

22 SAF at para 19

Subsequent reports

10 An autopsy was performed on the deceased by Dr Paul Chui ("Dr Chui"), who certified the cause of death to be a stab wound to the right upper arm that was V-shaped (the "fatal injury").[23] It was subsequently clarified that the deceased had two groups of injuries, namely:[24] incised/stab wounds which could have arisen from contact with a bladed weapon such as a knife; and other injuries which were minor injuries. The fatal injury was amongst the first category, and it was a through and through stab wound on the inside of the right upper arm that could in the ordinary course of nature cause death.[25]

11 Toxicology reports indicated the absence of alcohol and drugs in the samples of the deceased's blood and urine.[26]

12 Forensic analysis showed that eight recent areas of damage were found on the deceased's bloodied red and white striped collared T-shirt:[27]

(a) Six cuts on the left sleeve;

(b) A 30 mm long linear cut on the left chest region; and

(c) A two-segmented cut with segments measuring 40 mm long and 28 mm long on the right sleeve.

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23 SAF at paras 20 to 21

24 SAF at para 23

25 SAF at para 24

26 SAF at para 25

27 SAF at paras 26 and 27; Agreed Bundle (Amended) ("AB") at p 182

13 Fibre examination, damage examination and results of the simulation experiments showed that the murder knife could have caused the cuts.[28]

14 DNA analysis showed that the deceased's DNA was found on the wooden stick, the murder knife, the plastic sheath, and his collared T-shirt, whereas the accused's DNA profile was not found on all of these.[29] Both the accused's and deceased's DNA were found on a pair of pants worn by the accused on the day of the incident.[30]

15 Medical analysis of the accused showed that the accused had old healing injuries:[31] wounds over the back of his right hand; and bruising over his left hand.

16 A psychiatric assessment found that the accused:[32] was not suffering from any mental disorder or intellectual disability; was not of unsound mind at the time of the alleged offence; would have been aware of the nature of his actions at the time of the alleged offence; and was fit to give his plea.

17 Various statements were recorded from the accused, which were given voluntarily.[33]

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28 SAF at para 27

29 SAF at para 29

30 SAF at para 29

31 SAF at para 30

32 SAF at para 31

33 SAF at paras 32 to 33

The Autopsy report

18 There was an autopsy report by Dr Chui adduced in the agreed bundle, although not included in the agreed facts.[34] The autopsy report set out the injuries suffered by the deceased, amongst which included, of note:[35]

(a) a slicing tangential laceration injury to the left side of the face;[36]

(b) multiple stab wounds on the scalp,[37] likely to have been caused by vertical downward actions;[38]

(c) a stab wound on the chest;[39] and

(d) the fatal injury: a through and through V-shaped stab wound to the inside of the right upper arm, formed by two stab wounds joined at the apex of the "V", completely cutting the right branchial artery and cutting into the basilic vein.[40]

19 The "two stab wounds" of the fatal injury described in the autopsy report was later clarified by Dr Chui at trial to refer to a singular cut/ impact, with one entry wound and one exit wound, together forming the V-shape.[41]

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34 AB at p 80

35 AB at pp 80 to 82

36 AB at p 80, number 4; p 95 para 3

37 AB at p 80, numbers 1 and 2

38 AB at p 95, para 3

39 AB at p 81, number 8

40 AB at p 81, number 9; AB at p 96

41 Notes of Evidence ("NE") 7 August 2019 at pp 15 to 16

Witnesses and Video recording

20 Only one of the Prosecution's witnesses, Mr Ang Yong Ping ("Mr Ang"), was a direct witness to a part of the fight.[42] The Prosecution did not adduce other direct witnesses, although it seemed that there were some, since Mr Ang in his statement testified that there had been other on-lookers.[43] The CCTV footage also showed that there were passer-bys which should have had seen the fight.[44]

21 The CCTV footage captured part of the first fight and a fraction of the second fight, but they did not capture the causing of the fatal injury or the other stab wounds. The available footage only recorded a few seconds showing the lower half of the bodies of the accused and deceased during the second fight.[45]

The Prosecution's Case

22 The Prosecution argued that there were four elements to prove murder under s 300(*c*) of the Penal Code, as set out by the Court of Appeal in *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR(R) 582 ("*Lim Poh Lye*") at [17] citing *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*"):[46]

(a) It must be objectively established that a bodily injury is present;

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42 NE 6 August 2019 at p 68; PCS at para 14

43 AB at p 49

44 P332, video titled "22 – 6C Lor 23(Cam1)"

45 P332, video titled "TCFB_0365_2016 Annex B" ("stitch video") at 10:23 to 10:28 of stitch video run time, which correlates to 8:27:37 am to 8:27:42 am of CCTV time (see also P478 s/n 16; and AB pp 221 to 230)

46 PCS at para 49

(b) The nature of the injury must be proved;

(c) There must have been an intention to inflict that particular bodily injury, *ie.* it must not have been accidental or unintentional, or that some other kind of injury was intended; and

(d) The injury inflicted must be sufficient to cause death in the ordinary course of nature.

23 With regards to the third element, it is not necessary to show that the accused appreciated the seriousness of the wounds or that it would lead to death (*Lim Poh Lye* at [18] and [40]); the enquiry necessarily proceeds along broad lines based on common sense (*Virsa Singh* at [21]); and the Prosecution only has to show that the accused intended the particular but not the precise injury (*Lim Poh Lye* at [37]).[47]

24 The Prosecution contended that the only issues in dispute were whether the accused had inflicted the fatal injury (the "*actus reus*"), and whether he had had the intention to inflict that particular injury (the "*mens rea*").[48] It was argued that the *mens rea* would be fulfilled if the Prosecution proves an intent to stab the deceased's upper arm torso area.[49] The other elements were not in dispute.[50]

25 The Prosecution's case is that both elements were satisfied, relying solely on circumstantial evidence.[51] Where the prosecution relies solely on

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47 PCS at para 50

48 PCS at paras 58 to 59

49 PCS at para 52

50 PCS at para 58

51 PCS at para 53

circumstantial evidence, the test is that the evidence must inevitably and inexorably lead the court to a single conclusion of the accused's guilt (*Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [85]).[52] This was argued to be met in the present case.

26 The circumstantial evidences relied on for proving both *actus reus* and *mens rea* were largely the same.

27 Firstly, the Prosecution pointed to the accused being the aggressor:[53] the accused was enraged, purchased a knife, promptly returned to Lorong 23 Geylang and had charged first at the deceased, sparking the incident; the accused did not desist his attack, delivering several effective punches even whilst and after the deceased tried to disarm the knife; and the accused suffered little injury from the incident.

28 Second, even though Mr Ang did not witness the causing of the fatal injury, the fatal injury must have had been inflicted by the accused in the earlier part of the fight before Mr Ang came onto the scene:[54] the accused had held the knife firmly in his hand during the earlier part of the fight whilst exchanging blows with the deceased; the entire fight lasted about two minutes but Mr Ang came onto the scene only after about a minute into the fight; when Mr Ang came onto the scene, he observed the deceased's shirt to be soaked in his own blood such that it appeared red in colour; according to Dr Chui, only the fatal injury would have resulted in torrential bleeding, whereas the only other stab wound through the shirt, namely, the chest wound, had only resulted in slight bleeding;

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52 PCS at para 53

53 PCS at paras 60, 63 to 68

54 PCS at paras 69 to 72

and the CCTV footage, which only caught the lower half of the bodies of the accused and the deceased, showed rapid footwork which made it evident that the parties were trading blows whilst facing each other.

29 Third, the accused admitted to holding the knife tightly in front of his chest, and since the accused and the deceased were around similar height, the position of the knife matched Dr Chui's evidence as to how the fatal injury could have been caused.[55]

30 Fourth, the Prosecution argued that the fact that multiple stab wounds were inflicted on the deceased's upper body pointed to the accused's culpability: aside from the fatal injury, other knife wounds were inflicted on the face, ear, chest, scalp and left upper arm.[56]

31 Finally, the accused had dashed off after the fight, even abandoning the bicycle that he claimed was the purpose of him returning to Lorong 23 Geylang, showing that he was trying to evade the consequences of stabbing the deceased.[57]

32 In response to the Defence, the Prosecution submitted that the accused's testimony should be rejected, as it was self-serving and devoid of credit; he was evasive, inconsistent, and unbelievable.[58] His claim that he did not know that the deceased suffered various stab wounds was not believable; his explanation

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55 PCS at paras 73 and 74

56 PCS at paras 75 to 77

57 PCS at paras 78 to 80

58 PCS at paras 82 to 86

that the wounds were accidentally caused were also not believable.[59] The testimony of Xu Aihang who allegedly saw the deceased flipping tables did not assist the accused.[60]

33 No legal defences were available, particularly sudden fight or private defence.[61]

34 The Prosecution did not submit on sentence.[62]

The Defence's Case

35 The Defence did not dispute the legal framework provided by the Prosecution.[63] The main submissions were that there was no *actus reus* and *mens rea*.[64]

36 The Defence argued that the accused did not inflict the fatal injury, or alternatively, even if he did, it was unintended.[65] An alternative factual scenario was raised, that the deceased could have caused the fatal injury by impaling his own arm on the knife while in the midst of the second fight.[66]

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59 PCS at paras 87 to 93

60 PCS at para 94

61 PCS at paras 95 to 97

62 NE 2 March 2020 at p 7

63 Defence's Closing Submissions dated 30 January 2020 ("DCS") at para 20

64 DCS at para 15

65 DCS at para 15

66 DCS at para 39

37 The Defence argued that the evidence supported that there was a reasonable doubt that the accused caused the fatal injury. The accused's evidence that he did not stab the deceased in any manner on purpose was accurate, consistent and credible.[67] Inspector Lim Boon Wah Daniel ("Insp Daniel") agreed that the accused's testimony had been detailed, specific and consistent,[68] and his memory was sharp.[69] ASP Thinagaran s/o S. Krishnasamy ("ASP Thinagaran") had described the accused's evidence as being matter of fact.[70] ASP Thinagaran also agreed that the accused was cooperative in investigations, and was forthright in his statements.[71] Both Insp Daniel and ASP Thinagaran also agreed that the accused had never stated that he had stabbed the deceased in the right upper arm.[72]

38 Mr Ang had testified that he had not seen the accused stabbing the deceased, and further, that the deceased had held the knife during the later part of the fight.[73] Dr Chui had accepted that there was a possibility that the deceased's arm could have impaled itself on the knife during the fight, causing the fatal injury.[74] Further, Dr Chui was unable to tell who caused the stab wound, and was not willing to commit himself.[75]

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67 DCS at para 41

68 DCS at para 80

69 DCS at para 79

70 DCS at para 90

71 DCS at paras 99 to 100

72 DCS at paras 83, 93 to 95

73 DCS at para 48

74 DCS at para 39

75 DCS at paras 64 and 68

39 The Defence also argued that there was a discrepancy between ASP Thinagaran's field diary notes and the accused's first contemporaneous statement.[76] In the former, ASP Thinagaran recorded that the accused stabbed the deceased in the stomach,[77] whereas in the latter, the accused merely stated that he did not know how he stabbed the accused.[78]

40 The Defence argued that the accused was not trying to pick a fight with the deceased. The accused only bought the murder knife for self-protection, and went back to Lorong 23 Geylang to retrieve his bicycle, which had cost him S$192. [79] The bicycle was important to him as he was a rag and bone man with bad legs.[80] The accused loitered in the shop for some time before purchasing the murder knife, and he also chose to take a longer route back to Lorong 23 Geylang, which showed that the accused wanted to avoid the deceased, and that the knife was indeed for self-protection.[81] Further, the murder knife was not even removed from its plastic sheath, which would have been done if the accused intended to stab the deceased.[82]

41 There were also some other points raised: the deceased did not mention that the accused stabbed him during his phone call to Yeo after the incident;[83]

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76 DCS at para 81

77 Supplementary Bundles of Documents Volume 1 ("1SBD") at p 44

78 AB at p 240;

79 DCS at paras 143 to 146, 157

80 DCS at para 155

81 DCS at para 150

82 DCS at paras 152 to 153

83 DCS at para 164

the accused was of low IQ;[84] the deceased was a gambler with bad temper;[85] the deceased was younger, stronger and more aggressive than the accused;[86] and the accused fled from the scene not because he had stabbed the deceased, but because he had lost control of the knife, feared for his life and was escaping.[87]

42 In relation to the sentence, the Defence argued that if the accused was convicted under s 300(*c*), life imprisonment should be awarded instead of the death penalty as there had been no viciousness or blatant disregard for human life; the cause of death was a single stab wound which occurred in the middle of a fight, where the deceased had been the younger and stronger, and had been aggressive.[88]

The Decision

Summary of findings

43 I concluded from the evidence and submissions that the charge was made out against the accused. The requirements under s 300(*c*) had been elucidated in *Lim Poh Lye* ([22] above). The issues were only the *actus reus* and *mens rea*, as the other circumstances had been fulfilled.

44 I took into account that despite the presence of the security cameras and the fight occurring on a street, there was only circumstantial evidence concerning whether the accused did inflict the fatal injury and what his state of

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84 DCS at para 171

85 DCS at para 179

86 DCS at para 189

87 DCS at paras 194 to 197

88 NE 2 March 2020 at pp 3 to 4

mind was. There was no witness in court who could testify to the actual stabbing, nor was there anything else in the evidence that directly implicated the accused.

45 Nonetheless, considering the evidence, the *actus reus* and *mens rea* were established beyond reasonable doubt. Aside from the fatal injury, the deceased had suffered multiple other injuries on the head and torso, some of which were clearly not self-inflicted or accidentally inflicted. Further, it was the accused who had sought out the deceased and initiated the incident. In addition, the fatal injury must have had been inflicted during the first part of the second fight when the accused firmly held the knife and when they were trading blows. The cumulative effect of these separate pieces of evidence was that the fatal injury was caused by the accused, and that he did so intentionally. The alternative explanations that the fatal injury was caused by the deceased impaling himself, or that it was caused accidentally by the accused, were of such a remote degree that it could not have been said to raise any reasonable doubt.

46 No legal defences were made out on the facts.

The legal framework

47 As set out by the Prosecution (above at [22] to [23]), the elements under s 300(*c*) of the Penal Code were set out by the Court of Appeal in *Lim Poh Lye* at [17] citing *Virsa Singh* ([22] above):[89]

(a) It must be objectively established that a bodily injury is present;

(b) The nature of the injury must be proved;

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89 PCS at para 49

(c) There must have been an intention to inflict that particular bodily injury, *ie.* it must not have been accidental or unintentional, or that some other kind of injury was intended; and

(d) The injury inflicted must be sufficient to cause death in the ordinary course of nature.

48 Although not explicitly mentioned in the above, it is obvious that there is also the *actus reus* requirement that the bodily injury must actually be inflicted by the accused, and a causation requirement that the bodily injury was the one that had indeed caused the death (*Chan Lie Sian v Public Prosecutor* [2019] 2 SLR 439 ("*Chan Lie Sian*") at [79] to [81]). Section 300 explains when culpable homicide amounts to murder, and must be read with the culpable homicide provision under s 299 Penal Code which requires the elements of *actus reus* and causation.

The issues

49 The only disputed elements in the present case were the *actus reus* and *mens rea* elements (defined above at [24]), namely, whether the accused inflicted the fatal injury, and whether he intended to inflict it.

50 It was not disputed that the V-shaped stab wound was the fatal injury and that it was sufficient in the ordinary course of nature to cause death (above at [10]).

The requisite level of particularity

51 With regards to the *mens rea*, the Prosecution only has to show that the accused caused the particular but not the precise injury (*Lim Poh Lye* at [37]).[90]

52 Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2015, Revised 2nd Ed) ("*YMC*") at paras 9.84 to 9.85 suggested that there were two possible interpretations of what *Lim Poh Lye* meant, that the injury intended only had to be particular and not precise. First, "particular" could be interpreted to mean something less specific than "precise", such that the injury intended only had to be in the region of that area, and not the specific area. This interpretation deals with the location of the intended injury, and also its depth. Second, the reference to particularity only meant that the accused did not have to intend the consequences of the injury, but that he must still have had intended the injury to the specific part of the body. This interpretation deals with the harm caused by the intended injury. The Prosecution argued that the first interpretation must be the right one.[91]

53 I accepted that *Lim Poh Lye* intended the first meaning. The location and depth of the injury intended does not have to be overly precise, but merely sufficiently particular. The second meaning seemed to have had read too much into the distinction which did not seem supported by the text of the judgment. In any case, the same result would have had been reached on the facts regardless of which interpretation was adopted. Apart from *Lim Poh Lye*, the first rule is also supported by policy and precedents.

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90 PCS at para 50

91 PCS at para 52

54 There are two competing interests at play in determining the requisite level of particularity. On one hand, the test cannot be so narrow so as to be impossible to prove. On the other hand, it cannot be too broad such that the accused is convicted of murder for an injury he did not intend. A broad-based, simple and common-sense approach has to be adopted (*Virsa Singh* at [21]), drawing a middle ground between the competing interests. This has to be a fact specific inquiry, depending on the circumstances of each case.

55 Using the present case as an example, it would defy common sense to expect that the Prosecution prove that the accused intended to stab the right upper arm medially, precisely 9.5cm to 10cm distal to the right axillary floor, to a depth of 7cm.[92] On the other hand, as stated in *Lim Poh Lye* at [22], it cannot have been "some other kind of injury" that was intended, such as a stab to the right forearm, in the present case.

56 The precedents on s 300(*c*) show that the *mens rea* will usually be satisfied if the Prosecution proves intention to attack the limb where the injury was found. In *Lim Poh Lye*, *mens rea* was established by finding that the accused persons intended to stab the deceased's thigh (at [39]). In *Chan Lie Sian* ([48] above), *mens rea* was establishing by finding that the accused intended to hit the deceased's head (at [43(a)], [69], [81]). The same was found in *Public Prosecutor v Ellarry bin Puling and another* [2011] SGHC 214 at [46] to [48]. In *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 ("*Wang Wenfeng*"), *mens rea* was made out as there must have been "a firm hand intent on bringing the knife towards [the deceased's] chest" (at [35]). In *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*"), the issue

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92 AB at p 81

was pitched as whether there was intention to inflict the fatal craniofacial injuries on the deceased (at [47], [61]). In *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 ("*Boh Soon Ho*"), the court held that *mens rea* was satisfied if there was intention to attack "the part of the body where the injury was found" (at [45(c)]).

57 None of these cases required an intention to attack the specific location within the limb, but pegged the level of specificity as just being the limb itself.

58 Turning back to the present case, I found that the Prosecution's submissions were not clear on what was the necessary level of particularity required. Certain parts of the written closing submissions referred to a required intention to stab the "upper arm torso area", whereas others referred to a required intention to stab the "right upper arm". For example, on one hand, it was stated that: "it is sufficient to show that the accused intended to cause the particular injury of a stab wound to [the deceased's] upper arm torso area… [which] would include the right upper arm area";[93] "[i]t does not lie in the mouth of an accused who savagely inflicts numerous stab wounds all over the upper arm torso area of a moving target to then claim that he was not guilty of murder just because he did not intentionally aim for… the right upper arm";[94] and "if the accused was targeting the upper arm torso area, he must have intended to stab… the right upper arm".[95] These statements pitched the upper arm torso area as the requisite level of particularity.

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93 PCS at para 52

94 PCS at para 52

95 PCS at para 52

59 On the other hand, it was later stated that: "[t]he Prosecution relies on circumstantial evidence to prove that the accused intentionally stabbed… the right upper arm";[96] "[i]t is plain that the accused intentionally stabbed… the right upper arm";[97] and "[i]t is beyond reasonable doubt that the accused intended to stab… [the deceased's] right upper arm".[98]

60 These differing statements reflected conflicting tests as to the *mens rea* required. The Prosecution seemed to be saying that an intent to stab the upper arm torso area would be sufficient, but at the same time, that this would somehow logically necessarily translate to an intent to stab the right upper arm, and that in any case, there was a specific intent to stab the right upper arm.

61 The Defence argued that there was no specific intent to stab the deceased's right upper arm, and alternatively, that there was no intent to stab the deceased at all.[99] No mention was made about the Prosecution's arguments regarding the upper arm torso area.

62 As will be seen below, I found that the evidence was sufficient to prove beyond a reasonable doubt that the accused intended to stab the deceased's right upper arm area. Since this narrower test was satisfied, there was no need for me to discuss the broader test pertaining to the upper arm torso area.

63 It was also unclear if the broader test would have been sufficiently particular to meet the requirements of s 300(*c*). The Prosecution produced no

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96 ` PCS at para 53

97 PCS at para 60

98 PCS at para 108

99 DCS at paras 198, 203

authority to show that s 300(*c*) had ever been applied in such a broad way.[100] As shown above at [56], the authorities in general based *mens rea* on an intention to strike the particular limb. The Prosecution argued that such a broad test should be allowed in the present case, where the parties were in a fight, and it was difficult for the accused to target only a specific body part.[101] Nevertheless, I do not propose to deal with the issue, and the appropriateness of such a broad test would have to be considered in another case where the issue is squarely before the court.

64 The *mens rea* test applied in the present case was the narrower test of whether the accused intended to stab the right upper arm.

Actus Reus and Mens rea

65 In the present case, the *actus reus* and *mens rea* were mainly proven via the same overlapping evidence.

66 The following circumstances, although insufficient when seen individually, taken cumulatively, showed beyond a reasonable doubt the *actus reus* and *mens rea* that the accused intended to inflict the fatal injury:

(a) When the injury must have been caused;

(b) The number, location and type of the injuries; and

(c) The conduct of the accused.

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100 PCS at para 52

101 PCS at para 52

When the injury must have been caused

67 I found that the fatal injury must have had been caused in the earlier part of the second fight when the accused held the knife and parties were exchanging blows on their feet.[102]

68 The fatal injury must have had been inflicted before Mr Ang came onto the scene. Mr Ang testified that when he came onto the scene, the deceased's shirt had already been "soaked in blood" such that it appeared to be red in colour.[103] According to Dr Chui, the fatal injury would have caused torrential bleeding;[104] in contrast, the only other stab wound through the deceased's shirt was the wound to the chest,[105] which Dr Chui described as only having caused "slight haemorrhage", in other words, slight bleeding.[106] Hence, the blood that Mr Ang observed must have had been due to the already-inflicted fatal injury.

69 In addition, Mr Ang testified that when he came onto the scene, the accused had already lost control of the knife; he saw that it was the deceased who was holding onto the knife, with the accused holding onto the deceased's hand which held the knife.[107] The knife was held far away relative to the deceased's body, to the side, about an arm's length away.[108] Although he saw

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102 PCS at pp 39 to 40

103 PCS at para 71; NE 6 August 2019 at p 72 at line 7

104 NE 7 August 2019 p 16 at line 16; PCS at para 71

105 AB at p 81

106 The Prosecution used the phrase "slight bleeding" in its closing submissions at para 71; Dr Chui used the phrase "slight haemorrhage" in his report (AB at p 81 at para 8) and the phrase "bleeding" in his EIC (NE 7 August 2019 at p 13 line 4)

107 NE 6 August 2019 at p 73

108 NE 6 August 2019 at p 73

the two struggling on the floor and also standing up to punch each other, he did not see any stabbing or slashing, or the knife being used.[109] This is consistent with the inference that the fatal injury must have been caused before Mr Ang came onto the scene. This also supports that the other stabbing injuries such as the chest injury and the scalp injuries were also caused before he came onto the scene.

70 Finally, Mr Ang observed that the deceased appeared to be losing and "had no more strength in him" after the struggle.[110] The accused was delivering more effective punches, even though the deceased was younger and more able-bodied.[111] The weakening of the deceased was likely due to blood loss, and was consistent with Dr Chui's testimony that the deceased would start feeling dizzy a couple of minutes after sustaining the fatal injury.

71 I hence found that the fatal injury was not caused when the accused and deceased were struggling and rolling on the ground,[112] but was caused in the earlier part of the second fight, before they were seen rolling on the ground by Mr Ang.

72 Before Mr Ang came onto the scene, the accused was holding the knife and the parties were exchanging blows on their feet. The CCTV evidence captured the lower body movement of some portion of the first part of the fight, from 7:55:37 am to 7:55:42 am, showing the legs of both parties moving rapidly while they were facing each other, as if in a fight, which made it clear that parties

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109 NE 6 August 2019 at pp 73 to 74

110 PCS at para 14; AB at pp 49 to 50

111 AB at pp 49 to 51, para 7

112 AB pp 49 to 50 at paras 3 and 7

had been exchanging blows with their arms whilst facing each other.[113] The accused admitted at trial that there had been an altercation which occurred while they were standing:[114] the deceased attacked him;[115] he had stabbed the deceased in the stomach region (likely the chest wound);[116] and he had been holding the knife in front of his chest during this starting part of the fight.[117] The accused testified that this was before the parties began struggling.[118] This first part of the exchange must have had been when the fatal injury was caused.

73 Based on the CCTV evidence, the fight started at around 7:55:35 am,[119] and lasted until around 7:57:22 am when the accused was captured fleeing the scene.[120] Mr Ang came onto the scene at around 7:56:31 am,[121] which meant that the fight had already been ongoing for about a minute. This provided ample time for the fatal injury and other injuries to be inflicted.

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113 PCS at para 72; stitch video at 10:23 to 10:28 of stitch video run time, which correlates to 8:27:37 am to 8:27:42 am of CCTV time

114 NE 20 November 2019 at p 12 line 21

115 NE 20 November 2019 at p 12 line 21

116 NE 20 November 2019 at pp 7 to 22

117 NE 20 November 2019 at p 20 line 27; PCS at para 74; P483 to 484 (photos of accused holding the knife in court during simulation)

118 NE 20 November 2019 at p 20 lines 29 to 30

119 PCS at para 70; stitch video at around 10:21 of stitch video run time, 8:27:35 am of CCTV time (the CCTV time was approximately 32 minutes faster than actual time, as can be seen by comparing the CCTV time to the time on Mr Ong's taxi camera, at footnote 164 below)

120 PCS at para 70; stitch video at 11:30 to 11:42 of stitch video run time, which correlates to 7:57:16 am to 7:57:28 am of Mr Ong's taxi camera time

121 PCS at para 71; P332, video titled "22 – 6C Lor 23(Cam1)" at 16:33 run time, corresponding to 8:28:31 CCTV time; NE 6 August 2019 at pp 67 to 68

The number, location and type of injuries seen

74 As set out above at [18], the deceased suffered multiple stab injuries, including to his scalp, chest and arm. The number, location, and manner in which the injuries were caused supported that they were intentionally caused by the accused.

75 The injuries were specifically located at vulnerable parts of the deceased's body. In addition, some non-negligible degree of force had been exerted in causing these injuries, judging from their depth and length. The chest injury was a vertical inward stab that was 7.5cm deep, penetrating the left pectoralis muscle;[122] the fatal injury was also a stab that was about 7cm deep; one scalp stab wound was very long, at 12cm, extending from the top of the scalp down to the left ear; another scalp stab wound had a depth of about 3cm;[123] and a third scalp wound was 0.5cm long.[124] The three scalp wounds did not merely penetrate the skin, but also scratched the hard skull bone, although only superficially, leaving visible marks on the skull.[125] Some of these appeared long, as seen from the autopsy photos.[126]

76 The non-negligible force exerted and location of these injuries supported an inference that they were intentional. If these relatively more forceful stab injuries were caused accidentally or unintentionally, one would have expected them to be spread out all over the body, limbs and legs. Instead, there were

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122 AB at p 81

123 AB at p 80

124 AB at p 80

125 P226 to P230 (autopsy photos)

126 P226 to P230 (autopsy photos)

mainly only minor abrasions and lacerations to the deceased's other body parts,[127] some of which Dr Chui testified were defensive injuries caused by fending off a bladed weapon, whilst some others were only minor.[128] In contrast, the earlier mentioned stab wounds, which were relatively deeper and more serious, were all at the vulnerable regions.

77 Further, it is notable that the medical evidence showed (below at [98]), and the accused also admitted,[129] that he did not suffer any knife injuries at all as a result of the fight. This showed that the use of the knife was largely one-sided, with the accused attacking the deceased. Hence, the injuries were more likely to have been caused when the accused had firm control of the knife in the earlier part of the fight, instead of during the struggle, where equal injuries to both parties would have had been more likely.

78 In addition, the sheer number of these injuries supported that they were intentional. The Court of Appeal in *Wang Wenfeng* (above at [56]) acknowledged that there was force to the argument that a large number of stab wounds (five in that case) supported that they were more likely to have been intentional (at [34] to [35]).

79 Finally, the manner in which the injuries were caused also supported that they were intentional. Dr Chui's autopsy report stated that the 12cm long scalp injury extended downwards.[130] He testified that it was likely caused by a vertical stab to the head which then skidded along the side of the skull as it came

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127 AB at pp 80 to 81

128 AB at pp 95 to 96

129 NE 20 November 2019 at p 17

130 AB at p 80

downwards until the ear.[131] Dr Chui testified that two other head injuries were similarly likely to have had been caused by a vertical downward action.[132] In addition, these scalp wounds were located on the upper left side of the head, rather high up, slightly towards the back.[133] The position and manner in which these injuries were caused made it anatomically difficult and highly unlikely for them to have been self-inflicted, or caused accidentally during the rolling around on the ground. It supported the inference that the accused had caused these injuries intentionally.

80 The above showed that accused had been repeatedly attacking the deceased with the knife at vulnerable locations using non-negligible force which led to the inference that as part of the attack, he had also intentionally caused the fatal injury.

The conduct of the accused

81 The Defence tried to paint the accused as merely acting in self-defence, buying the knife for protection, and that he merely went back to get his bicycle ([40] above). I found that this was not proven on the facts, and instead agreed with the Prosecution that the evidence showed that the accused was the aggressor and went back to attack the deceased.

82 The accused had been angry with the deceased after the first fight,[134] which had been intense and involved both parties punching each other and also

131 NE 7 August 2019 at p 10

132 AB at p 95

133 P226 to P230

134 AB at p 354

hitting each other with a wooden stick.[135] The accused eventually ended up at the losing end of the first fight, running away when the deceased attacked him with the wooden stick.[136] The accused then went and bought the murder knife and returned to the fight scene, less than 20 minutes after the first fight (above at [6] and [8]). The CCTV evidence showed that when the accused saw the deceased, the accused ran towards the deceased, instead of fleeing from him.[137] These circumstances supported the inference that the accused sought out the deceased to attack him.

83 The accused's claim that he was only trying to look for his bicycle and wanted the knife merely for protection did not gel with his behaviour: he did not seem to have displayed the caution or wariness one would have expected in the situation from a person who only wanted to get his bicycle, choosing to head directly to the same area, just a few minutes after the first fight, when he could have waited longer before returning; he did not try to scout from afar or peer around corners to see if the deceased was still there; and when he saw the deceased, instead of running away, he rushed headlong into the second fight. The fact that the accused ran towards the deceased also led to the inference that whatever the accused's earlier intentions may have been, by that point he wanted to cause injury to the deceased.

84 The accused's conduct as set out here would not, alone, have had proven that the accused caused, and intended to cause, the fatal injury. However, it

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135 NE 19 November 2019 at pp 49 to 50

136 NE 19 November 2019 at p 51

137 PCS at para 60; stitch video at 10:21 to 10:23 of stitch video run time, corresponding to 8:27:35 am to 8:27:37 am of the CCTV time

supported this inference, and had to be seen in totality with the other circumstantial evidences.

Cumulative effect

85 The cumulative effect of the separate pieces of evidence mentioned above proved beyond a reasonable doubt that the fatal injury was caused by the accused, and that he did so intentionally. As will be shown below, the alternative explanations that the injury was not caused by the accused, or that they were caused unintentionally, were of such a remote degree that they could not have been said to raise any reasonable doubt.

Defence's arguments

Miscellaneous points

86 The various other points raised by the Defence (at [35] to [41] above) also did not assist: although the murder knife was still wrapped in the plastic sheath, it was still used and clearly did not affect its effectiveness as a murder weapon; the accused's claim to have only seen the deceased at the last minute was irrelevant as the fact was that he still chose to charge towards him instead of running away; the fact that the bicycle was relatively expensive and important to the accused as a rag and bone man may have been one of the tangential reasons why he had gone back, but it did not dispel that the accused had formed the requisite intent to attack the deceased; the accused's loitering in the shop before buying the murder knife was equivocal and could have been because he was contemplating whether to attack the deceased or not; the fact that the accused took a longer route back was equivocal and not necessarily because he wanted to avoid the deceased; the deceased's relative youth and strength compared to the accused, bad temper and gambling habits were immaterial to

the *actus reus* and *mens rea*; the accused's low IQ was similarly not material to proving these elements – there was nothing in the report which showed that the accused was incapable of forming an intention to stab the deceased;[138] the deceased's failure to mention to Yeo that he was stabbed was also equivocal and did not show that he was not stabbed intentionally by the accused; and finally, the Defence had rightly pointed out that the fact that the accused had fled could be explained for other reasons and I had not given much weight to it.

Alternative theory

87 The Defence also raised the alternative theory that the deceased had impaled himself on the knife when he threw a punch at the accused.[139] It was not mentioned whether this punch was supposed to have had occurred when the parties were exchanging blows on their feet, or when they were on the ground struggling. The Defence relied heavily on Dr Chui's testimony that it was medically possible for the fatal injury to have been caused in this way.[140]

88 Although medically possible, Dr Chui had emphasised that generalised interpretation of injuries must be exercised with caution, and must be understood in light of the context of the event and relative position of the parties.[141] I found that based on the circumstances, the alternative scenario was too remote of a possibility.

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138 1SBD at pp 18 to 24

139 DCS at para 12

140 DCS at para 39

141 AB at p 95

89 As stated above, I had found that the fatal injury had been inflicted before the parties were rolling on the ground (at [71]) above). Hence, any alleged self-impaling could have only happened when the parties were still trading blows.

90 However, for such scenario to happen, the deceased must have had been facing the accused when he had thrown the punch and must have had seen the knife. The knife must have had been around his chest level, outstretched towards him, with the tip facing him. To make out the theory that the deceased impaled himself, without any intended action by the accused, the knife must also have been held in a stationary manner, such that it was not the accused who moved the knife towards the deceased, but only the deceased who moved towards the knife. I found it unthinkable that the deceased would recklessly rush towards the knife and punch the accused, impaling himself on a stationary knife in such manner. Hence, I did not accept this alternative theory.

91 The Defence argued that where two versions of fact are possible, the accused's version should be preferred.[142] This was inaccurate as conviction of the accused did not require proof beyond a shadow of a doubt, but merely beyond reasonable doubt (*Took Leng How v Public Prosecutor* [2006] 2 SLR(R) 70 at [28]); a possibility had to constitute a reasonable doubt before it could displace a conviction. In the present case, I found that the alternative theory was merely a remote possibility, given the strength of the inferences as to the *actus reus* and *mens rea* shown above, and did not displace the conviction.

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142 DCS at para 199

Accused's testimony and statements

92 The accused testified at trial that he did not know about the existence of all the stab wounds, including the fatal injury,[143] except for a stabbing wound around the stomach area (possibly the chest wound) which he admitted he may have caused by accident.[144] The accused denied causing all the other stab wounds.

93 The accused's testimony at trial largely corresponded with the accused's statements. In the accused's contemporaneous statement on 21 July 2016, he stated that he did not know how he stabbed the deceased.[145] In a further statement on 23 July 2016, the only mention the accused made of any stabbing was that: "I think the [deceased] had run into my knife and got stabbed".[146] In another further statement on 25 July 2016, the accused stated that he was not sure how the deceased suffered the long incised wound on the side of the head, and that he was confused.[147] In relation to the chest injury, the accused said that he could have cut the deceased in the course of the struggle, without any intention to do so.[148] In relation to the fatal injury, the accused said that the deceased could have sustained it during the course of the struggle, but did not admit to inflicting it nor intentionally causing it.[149]

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143 NE 20 November 2019 at p 18 lines 15, 22; p 19 line 5

144 NE 20 November 2019 at pp 10 to 12

145 AB at p 240

146 AB at p 348

147 AB at p 356

148 AB at p 357

149 AB at p 357

94 The Defence argued that the accused's testimony and statements had been accurate, consistent and credible (above at [37]).[150] The Defence referred to Insp Daniel and ASP Thinagaran's testimony at trial to show that the accused had been consistent, cooperative and matter of fact in his statements (above at [37]).

95 In spite of the above, I did not accept the accused's testimony. Although the accused's repeated denials of the *actus reus* and *mens rea* were internally consistent and leaned in support of his defence, the credibility of his testimony also had to be evaluated by considering its consistency with the objective evidence, as well as the accused's demeanour (*Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 at [9]).[151]

96 I found that the accused's testimony was outweighed by the objective evidence discussed above, namely: the number, location and manner of the stab wounds; the conduct of the accused; and the timing that the injury would have had been caused.

97 In addition, there were various parts of his testimony that conflicted with the objective evidence, weakening the accused's credibility as a whole. First, the accused testified that he was in the middle of the road when he saw the deceased and the deceased saw him, that he just stood in the middle of the road, and that it was the deceased who charged towards the accused to attack him.[152] However, this conflicted with the CCTV evidence which showed that the accused had ran towards the deceased (above at [82]).

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150 DCS at para 41

151 PCS at para 82

152 NE 19 November 2019 at p 16

98 Second, the accused testified that after charging at him, the deceased hit him on the head and arm with the wooden stick, causing bleeding in both areas.[153] However, the medical examination of the accused conducted after his arrest, about 12 days after the fight, showed that he had no obvious fresh physical injury, and that the craniofacial, neurological and cervical spine examination in relation to the described head injury produced no remarkable results.[154] The only injuries found were mild injuries at the right hand dorsum and left hand ulnar.[155]

99 Third, when asked whether he agreed that all the knife injuries were suffered by the deceased (since the accused admitted to suffering no knife injuries), the accused claimed that he had thought the deceased was not injured after the fight.[156] This was incredulous as the accused must clearly have had seen the deceased's shirt being completely soaked red in blood. It also contradicted the accused's earlier contemporaneous statement where he stated: "I know the deceased bleeding quite badly" [*sic*].[157] This showed that the accused must have had known of at least some of the stab wounds, despite his denial of knowledge.

100 Fourth, the accused claimed to have only walked away at normal pace after the fight.[158] This contradicted the recording from Mr Ong's taxi which

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153 NE 19 November 2019 at pp 16 and 19

154 AB at p 103

155 AB at p 103

156 NE 20 November 2019 at p 17

157 AB at p 241

158 NE 20 November 2019 at p 9 line 6

showed the accused running off,[159] as well as the testimony of Mr Ang who had observed the accused running away.[160]

101 Fifth, the accused claimed that when he left the scene after the second fight, the deceased chased him with the knife for about a dozen feet.[161] This contradicted the video footage from Mr Ong's taxi which showed that after the accused fled, the deceased stood unsteadily on the road, trying to pick something from the floor.[162] This was also showed by the CCTV evidence.[163]

102 These inconsistencies between the accused's testimony and the objective facts diminished his credibility and affected the weight that could be given to his denial of the *actus reus* and *mens rea*.

103 In addition, I found that the evidence of Insp Daniel and ASP Thinagaran did not materially assist the accused. It was clear that they were only testifying as to what was stated to them by the accused, and not as to the truth of whether the accused committed the stabbings.

104 The Defence referred to a discrepancy in the statements (above at [39]): ASP Thinagaran recorded in the field diary that the accused stabbed the

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159 Stitch video at 11:30 to 11:42 stitch video run time, corresponding to the time reflected on Mr Ong's taxi camera at 7:57:16 am to 7:57:28 am

160 AB at p 49 at para 4

161 NE 20 November 2019 at p 38

162 PCS at para 86; Stitch video at about 11:45 to 11:50 stitch video run time, corresponding to the time reflected on Mr Ong's taxi camera at 7:57:31 am to 7:57:36 am

163 Stitch video at about 11:58 to 12:19 stitch video run time, correlating to 8:29:28 am to 8:29:49 am of CCTV time (7:57:37 am of Mr Ong's taxi camera seemed to correlate to 8:29:37 am of the CCTV time; the latter seemed to have been faster by 32 minutes)

deceased in the chest, whereas the accused in the contemporaneous statement merely stated that he did not know how he stabbed the deceased. I found that this was not material as I did not rely on the field diary statement in convicting the accused.

105 For these reasons, the Defence's arguments did not make out a reasonable doubt.

Possible Defences

106 The accused did not invoke any legal defences. In any case, I found that the legal defences were not satisfied.

107 The defence of accident under s 80 of the Penal Code was not established as it required the doing of a lawful act with proper care and caution, which was clearly not the case here where the accused charged at the deceased with a knife and stabbed him.

108 Sudden fight under Exception 4 to s 300 of the Penal Code was also excluded because the fight was not sudden in the heat of passion; if there had been an interval between the quarrel and the fight, reason would prevail, and reason would definitely overcome passion and the fight cannot be said to be sudden (*YMC* at para 30.12). It could not be said that the quarrel escalated into the fight with no opportunity for the parties to regain their composure (*YMC* at para 30.12): the initial quarrel had taken place already 15 minutes ago; the accused had time to leave the scene and calm down, and even loitered around at the shop deliberating whether to purchase the murder knife (above at [40]); and he chose to buy the murder knife, went back to the scene and charged at the deceased. Hence, the fight could not be said to have had been sudden. Further, there had been undue advantage as was seen from the multiple and severe one-

sided injuries inflicted on the deceased, as opposed to the lack of any knife wounds on the accused (above at [74] to [77]) (*YMC* at para 30.32).

109 Private defence under s 100 of the Penal Code and/or exceeding private defence under Exception 2 to s 300 of the Penal Code were also not established for similar reasons. The defence did not even arise because it was the accused who had been the aggressor, seeking out the deceased with a knife (*Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [46(c)]). The accused did not prove that the deceased had assaulted him, reasonably causing apprehension of grievous harm (s 100(*b*) Penal Code). The one-sided injuries showed that the harm inflicted had been unnecessary, and since I had found that these were intended, the accused had intended more harm than necessary.

Conviction

110 Considering all of the evidence, I was satisfied that the charge under s 300(*c*) of the Penal Code was made out beyond a reasonable doubt.

Sentence

111 The accused hence had to be punished under s 302(2) Penal Code, with either death or life imprisonment, being liable to caning if the latter was imposed. The Defence argued in favour of life imprisonment whereas the Prosecution did not submit on sentence.

The Law

112 The framework for the exercise of sentencing discretion under s 302(2) Penal Code has been set out by a line of Court of Appeal authorities. In essence, the death penalty is warranted where the actions of the offender outrage the feelings of the community, such as by exhibiting viciousness or a blatant

disregard for human life (*Chan Lie Sian* (above at [48]) at [84]; *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 ("*Kho Jabing*") at [44]–[45]; *Micheal Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [47]; and *Chia Kee Chen* (above at [56]) at [110]).

113 It is the manner in which the offender acted which takes centre stage; relevant considerations include the number of stabs or blows inflicted, the area of injury, the duration of the attack, the force used, the mental state of the offender, and the offender's actual role or participation in the attack (*Chan Lie Sian* at [85]; *Kho Jabing* at [45]; *Chia Kee Chen* at [110]).

Submissions

114 The Defence argued that the accused did not manifest a blatant disregard of human life, nor was he so vicious so as to outrage the feelings of the community.[164] The fatal injury was a single stab wound inflicted in the course of the fight, which pitted the accused against a younger, stronger and more aggressive opponent.[165] The accused did not know that the injury was fatal.[166] The gruesomeness of the scene should not affect the outcome.[167]

115 The accused was 64 years old at the time of the incident; 67 at the point of sentencing.[168] He had a number of ailments;[169] he was of low IQ, with slow

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164 NE 2 March 2020 at p 6 lines 12 to 14

165 NE 2 March 2020 at p 3

166 NE 2 March 2020 at p 4 lines 13 to 15

167 NE 2 March 2020 at p 4

168 NE 2 March 2020 at p 5

169 NE 2 March 2020 at p 5

processing of information.[170] It was highlighted that the Prosecution was not seeking the death sentence.[171]

Decision and Analysis

116 I accepted the arguments of the Defence. The death penalty was not called for in the circumstances here.

117 The Prosecution bears the burden of proving that the actions of the accused outraged the feelings of the community (*Chan Lie Sian* at [93]), and this was not done, as the Prosecution did not make submissions.

118 In any case, the factors weighed against the death penalty.

119 First, I accepted the Defence's contention that the accused did not know that the injury was fatal, either during the time of attack or after the attack (above at [92]). This supported that there was no blatant disregard for human life (*Chan Lie Sian* at [88]).

120 Second, in contrast to cases such as *Chia Kee Chen* ([56] above) and *Kho Jabing* ([112] above) where the death penalty was awarded, it was not proven in the present case that the accused had any intention to want the victim to suffer as much as possible, or that the accused inflicted completely unnecessary additional blows even after the accused stopped reacting (see *Chan Lie Sian* at [91]). Here, the accused and deceased were fighting, and the stabs were inflicted whilst the deceased was still alive and retaliating. The fight lasted

170 NE 2 March 2020 at p 6

171 NE 2 March 2020 at p 6

only about two minutes, which was even shorter than the 15 minutes in *Chan Lie Sian*, which the court had implied to be relatively short (at [90]). Further, as testified by Mr Ang, a good part of the fight involved struggling on the ground and exchanging of blows (above at [69] to [72]). The duration of the one-sided stabbing must not have lasted more than a minute.

121 Third, in contrast to *Chia Kee Chen*, the present case lacked the high degree of premeditation and planning, which was a factor supporting the death penalty in that case (at [139]).

122 Fourth, the level of viciousness in the present case, whilst certainly very reprehensible, was not of such degree so as to outrage the feelings of the community. As a reference point, the viciousness in the present case paled in comparison to *Chia Kee Chen*. In that case, the Court of Appeal found that the "viciousness of the attack cannot be denied", based on the following evidence (at [140]):

> Bloodstains were found on the ground near the Deceased's car, on its windows as well as on the ceiling of the car park above the car… Bloodstains were also found on the ceiling, rear door and both side walls of the cabin of the van; further, a wooden floorboard that was originally in the cabin of the van was stained with blood… This showed that a violent assault against the Deceased had already commenced in the car park where he was abducted, and continued in the cabin of the van. The various blunt force blows were directed at the Deceased's face, a vulnerable part of his body. As a result of the assault, the Deceased suffered extensive fractures in his skull: almost every bone from the bottom of his eye socket to his lower jaw was fractured…

123 There, the accused and two accomplices had ambushed the deceased the moment he exited his car at the carpark, assaulted him, dragged him into their van, tied his hands and legs with nylon rope, and began smashing his head, face

and body with a hammer-like object, causing the above mentioned injuries and blood stains (at [16], [17], [51], [58]).

124 Whilst *Chia Kee Chen* should not be seen as setting a low watermark for the requisite level of viciousness, it assisted the accused that the viciousness in the present case was substantially milder.

125 Finally, the Defence rightly pointed out that the court should not be distracted by the gruesomeness of the scene (*Chan Lie Sian* at [93]).

126 The above factors seen in totality supported that the death penalty should not be imposed. It was sufficient and proportionate to the accused's culpability to impose a sentence of life imprisonment, with effect from 21 July 2016, the date of first remand. No caning could be imposed because of the accused's age.

Conclusion

127 For the reasons above, the accused was convicted and sentenced accordingly.

Aedit Abdullah
Judge

Eugene Lee Yee Leng, Claire Poh Hui Jing and Senthilkumaran Sabapathy (Attorney-General's Chambers) for the prosecution; Wong Seow Pin (S P Wong & Co) and Wong Li-Yen Dew (Dew Chambers) for the accused.