IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 73

Court of Appeal / Criminal Appeal No 16 of 2020

Between

Public Prosecutor

… *Appellant*

And

Miya Manik

… *Respondent*

Court of Appeal / Criminal Appeal No 26 of 2020

Between

Miya Manik

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Motion No 21 of 2022

Between

Public Prosecutor

… *Applicant*

And

Miya Manik

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law — Complicity — Common intention]
[Criminal Law — Offences — Murder]
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Miya Manik and another appeal and another matter

[2022] SGCA 73

Court of Appeal — Criminal Appeals Nos 16 and 26 of 2020 and Criminal Motion No 21 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
11 November 2022

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Tay Yong Kwang JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 CA/CCA 16/2020 ("CCA 16") and CA/CCA 26/2020 ("CCA 26") are cross-appeals against the decision of the High Court Judge (the "Judge") in HC/CC 20/2019 ("CC 20"). In CC 20, the accused, Miya Manik ("Manik") was tried on a single charge with two alternatives, namely, a charge under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") (the "Original Charge") and in the alternative, a charge under s 300(*c*) of the Penal Code read with s 34 of the Penal Code (the "Common Intention Charge"). He was acquitted on both alternatives and was convicted instead on a charge under s 326 of the Penal Code read with s 34 of the Penal Code (the "Substituted s 326 Charge") substituted by the Judge. Manik was sentenced to 15 years'

imprisonment and 15 strokes of the cane, with the imprisonment backdated to the date of his arrest, 30 September 2016.

2 CCA 16 is the Prosecution's appeal against the acquittal of Manik on the Common Intention Charge. CCA 26 is Manik's appeal against sentence on the Substituted s 326 Charge. In addition, the Prosecution has also applied by way of CA/CM 21/2022 ("CM 21") to amend its petition of appeal in CCA 16 to include the legal position clarified in *Public Prosecutor v Azlin binte Arujunah and other appeals* [2022] SGCA 52 ("*Azlin*") that the test set out in *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119 ("*Daniel Vijay*") applies to dual crime scenarios while the test in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") continues to apply to single crime scenarios. As the Judge's decision was made in 2020 and the decision in *Azlin* was delivered in July 2022, we allowed the amendment sought in CM 21.

Factual background

3 Manik, aged 27 at the material time, is a male Bangladeshi who was working in Singapore. He was a member of a syndicate ("Syndicate 1") that controlled the sale of contraband cigarettes at a field at Tuas South Avenue 1 in the latter half of 2016. Other members of Syndicate 1 included one "Aziz" and one "Mitho". The deceased, Munshi Abdur Rahim ("the Victim") was a member of another contraband cigarette syndicate ("Syndicate 2") which was vying for control over contraband cigarette sales at the same field. The Victim was 32 years old at the time of the incident.

4 The Victim's tragic death occurred as a result of an incident during the night of 24 September 2016 between members of the two rival syndicates, with Syndicate 1 seeking to monopolise the illegal trades at the said field. After a

meeting at a canteen at around 7.00pm that night, members of Syndicate 1 proceeded towards the field, many of them armed with choppers. When they had reached the field, one of them approached the Victim and asked him why he was selling cigarettes in that area. Manik knew the Victim from a previous construction project that he had worked in. Manik went to speak to the Victim and shook his hand. One of the members of Syndicate 1 suggested that they talk at Tuas South Avenue 6 and the group of men started moving in that direction.

5 At this point, confusion erupted. The source of the confusion was unclear. According to one member of Syndicate 1, all of a sudden, another member, Aziz, wielded a knife and shouted: "Let's chop hard this son of a bitch." He testified that Aziz was "like that", and that he "gets into [a] fight before everybody … else". According to other members of Syndicate 1, there were shouts warning about police presence, following which people started running.

6 The Victim started running away. The evidence was that Aziz, Mitho, Manik and a few others (all members of Syndicate 1) started chasing the Victim who stumbled and fell. Aziz, Mitho, Manik caught up with the Victim and Mitho kicked the Victim. The three men then attacked the Victim with choppers while he was struggling and kicking on the ground. There were chopping motions made by the three attackers. Somehow, the Victim managed to get up and ran away from his attackers. The attackers did not give chase this time but turned to run towards where they came from. This incident from the time the Victim ran and fell up to the time he hobbled away was recorded fortuitously by a camera installed in a bus parked nearby (the "Video Footage"). This incident was recorded as having happened at 9.47pm for about nine seconds. As the area was not well lit, the Video Footage could not provide clear images.

7 The Victim managed to run some distance away before he phoned the police to report that "[p]eople chopped me with knife". When the police and the ambulance arrived, the Victim was lying on his back in a pool of blood, with most of the bleeding coming from his lower left leg. He was pronounced dead at the hospital.

8 It was not disputed that the cause of death was acute haemorrhage due to incised wounds at the left leg and the back of the Victim. The incised wound at the left leg was identified as the fatal injury ("the Fatal Injury") as it could have caused significant haemorrhage individually sufficient to cause death in the ordinary course of nature. The wound at the Victim's back resulted in significant haemorrhage that contributed to death. The other injuries were relatively superficial and did not have a significant bearing on the death of the Victim.

9 In the meantime, Manik and several other Syndicate 1 members left in a taxi. Several of them went to the East Coast Park to discuss the events that happened earlier. Instead of returning to their dormitories, Manik and a few others went to stay in a hotel in Geylang. Thereafter, Manik stayed with a friend until his arrest on 30 September 2016 at a construction site in Tampines.

The charges

10 Manik was tried on the following Original Charge with the Common Intention Charge as its alternative:

> That you, Miya Manik,
>
> on 24 September 2016, at or about 9.47 pm, at the vicinity of Tuas View Dormitory located at 70 Tuas South Avenue 1, Singapore, did commit murder by causing the death of Munshi Abdur Rahim "the deceased"), *to wit*, by slashing the deceased's left leg with a chopper, causing the deceased to suffer, *inter alia*,

> a 16 x 4 cm deep oblique incised wound on the proximal part of the lateral aspect of the left leg, with intention to cause said bodily injury, which injury is sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under s 300(c), punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> Alternatively,
>
> on 24 September 2016, at or about 9.47 pm, at the vicinity of Tuas View Dormitory located at 70 Tuas South Avenue 1, Singapore, together with two unidentified males known as "Aziz" and "Mitho", and in pursuance of the common intention of you three, did commit murder by causing the death of Munshi Abdur Rahim "the deceased"), *to wit*, by slashing the deceased's left leg with a chopper, causing the deceased to suffer, *inter alia*, a 16 x 4 cm deep oblique incised wound on the proximal part of the lateral aspect of the left leg, which injury is sufficient in the ordinary course of nature to cause death, knowing it likely that such injury would be caused, and you have thereby committed an offence under s 300(c) read with s 34 and punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

11 Aziz and Mitho, the co-accused persons named in the Common Intention Charge, were not arrested. While some members of Syndicate 1 were called to testify, they could only relate what happened up to the point where confusion erupted and people started to disperse. The only evidence concerning the events leading up to the Victim running away and the attack by Manik, Aziz and Mitho therefore came only from Manik and the Video Footage.

The Judge's decision

12 The Judge considered the evidence and concluded that each of the three attackers was armed with a chopper. Manik had claimed that he only had a wooden stick with him. The Judge held that while the Video Footage showed that it was either Aziz or Manik who inflicted the Fatal Injury, it was not clear who it was really was. However, the Judge also found that whoever inflicted the Fatal Injury had done so intentionally and not accidentally. As the Prosecution

could not prove beyond reasonable doubt that Manik was the one who inflicted the Fatal Injury, the Original Charge was not proved.

13 In considering the Common Intention Charge, the Judge stated that it was clear from *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 that it was the common intention to inflict the particular Fatal Injury that was crucial and it was not necessary to ascertain who struck the Fatal Injury, so long as the court was able to infer beyond reasonable doubt that the requisite common intention was shared by the participants. The Judge then referred to *Daniel Vijay*, where the Court of Appeal held that where a secondary offender was charged with murder under s 300(*c*) read with s 34 of the Penal Code, it was necessary to consider whether there was a common intention among all the offenders to inflict a s 300(*c*) injury on the Victim (the inflicting of such injury being the criminal act which gave rise to the offence of s 300(*c*) murder). The Judge held that in the context of s 300(*c*) read with s 34, the requisite intention is the common intention to inflict a s 300(*c*) injury. She disagreed with the Prosecution's submissions that the common intention only needed to be to inflict the injury and the question whether it was sufficient in the ordinary course of nature to cause death was to be determined objectively, similar to the requirements for individual liability under s 300(*c*) as set out in *Virsa Singh*.

14 The Judge held that the evidence suggested that there was no plan to cause s 300(*c*) injury from the outset when Syndicate 1 members met earlier in the evening of 24 September 2016. The evidence indicated that, although armed with choppers, the members' intention was to talk to resolve the territorial issue over the field. If talking did not work and Syndicate 2 members fought them, they would fight back. There was no plan to kill or to cause serious injury. The catalyst for the attack on the Victim was also unclear. However, it was clear that there was a plan of some sort.

15 The Judge also held that the surrounding circumstances pointed away from a finding that the three attackers held a common intention to cause s 300(*c*) injury. The medical evidence militated against a finding that the plan (whether pre-arranged or emerging on the spot) was to inflict such injury. Although there were ten knife wounds on the Victim, most of the injuries were superficial or insignificant. The incised wounds were not directed at the vulnerable parts of the body such as the head, the chest or the abdomen. Most of the wounds were inflicted on the Victim's limbs and back. The lack of serious injury other than the Fatal Injury raised a reasonable doubt that their common intention was to cause s 300(*c*) injury. While the Video Footage showed large arm movements from the three attackers wielding choppers, the objective evidence of the injuries belied the apparent ferocity of the attack.

16 The Prosecution contended that the attack was to send a message to mark Syndicate 1's territory. However, the Judge stated this would detract from any intention to cause a fatal injury, because it would attract the attention of the police and enforcement authorities to the site. The attackers simply wished to demonstrate their force without going so far as to inflict fatal wounds. Even if they were reckless as to whether a fatal injury would be caused, this would be insufficient to show common intention to do so (citing *Daniel Vijay* at [87]–[88]).

17 Further, the attack lasted less than nine seconds. When the Victim managed to get up and run away, the attackers did not give chase. If their intention was to cause s 300(*c*) injury, they appeared unconcerned that they had not accomplished their objective.

18 Viewing the evidence as a whole, the Prosecution's case that the three attackers shared the intention to cause s 300(*c*) injury was a possibility but that

was insufficient to satisfy its burden of proof. Where there was a reasonable inference that was more favourable to the accused, the court should act in accordance with the presumption of innocence and prefer the favourable inference. The Judge concluded that the Prosecution had not proved the common intention to cause s 300(*c*) injury and therefore had not proved the Common Intention Charge beyond reasonable doubt.

19 However, the Judge was of the view that the intention to cause grievous hurt to the Victim was clear. Common intention could be formed on the spot, just before the commission of the criminal act. At the very latest, the common intention of the three attackers was formed when they gave chase and caught up with the Victim. When the unarmed Victim fell to the ground and they started to use their choppers, their joint action in slashing the Victim around ten times with their choppers was sufficient to show their common intention to cause hurt which endangered life. In that context, the Judge agreed with the Prosecution that an inference could be drawn from the fact that they were armed with choppers, weapons which were associated with and apt to cause serious injury and did cause fatal injury in this case. She held that the three attackers shared a common intention to attack the Victim with their choppers in order to cause grievous hurt.

Amendment of charge

20 The Judge considered it appropriate to alter the Common Intention Charge to one under s 326 read with s 34 of the Penal Code. The Substituted s 326 Charge was in the following terms:

> That you,
> Miya Manik
> […]

> on 24 September 2016, at or about 9.47pm, at the vicinity of Tuas View Dormitory located at 70 Tuas South Avenue 1, Singapore, together with two males known as "Aziz" and "Mitho", and in furtherance of the common intention of you all, did voluntarily cause grievous hurt by means of an instrument used for cutting, *to wit*, by slashing Munshi Abdur Rahim ("the deceased") and inflicting, *inter alia*, a 16 x 4 cm deep oblique incised wound on the proximal part of the lateral aspect of the deceased's left leg, causing the death of the deceased, and you have thereby committed an offence punishable under s 326 read with s 34 of the Penal Code (Cap. 224, Rev. Ed. 2008)

21 The Judge held that the common intention was to inflict hurt which endangered life, a kind of grievous hurt as set out in s 320(*h*) of the Penal Code and that the grievous hurt caused was death, another kind of grievous hurt as specified in s 320(*aa*) of the Penal Code. This common intention was shown by the use of the choppers, the nature of the attack and the injuries caused. In the context of grievous hurt, the necessary common intention did not need to be to cause the particular grievous hurt inflicted but need only be to cause an injury within the categories of grievous hurt in s 320 of the Penal Code.

22 After the Substituted s 326 Charge was read and explained to Manik, his Defence Counsel confirmed that Manik was not adducing new evidence or recalling any witness. Based on her findings, the Judge found Manik guilty on this charge.

23 The Judge sentenced Manik to 15 years' imprisonment and 15 strokes of the cane with effect from the date of arrest on 30 September 2016. In arriving at this sentence, she took reference from *Ng Soon Kim v Public Prosecutor* [2019] SGHC 247 and adopted the following approach. First, consider the indicative sentence if the charge had been under s 325 Penal Code. Second, consider an uplift for the nature of the dangerous means used. Third, adjust the sentence according to the aggravating and the mitigating factors.

24 Based on *Public Prosecutor v BDB* [2018] 1 SLR 127, since death was caused in this case, the starting point was around eight years' imprisonment and 12 or more strokes of the cane. The Judge then gave an uplift of three years' imprisonment for the dangerous means used, which was the use of choppers. After considering the aggravating and mitigating factors, she applied a further uplift of four years' imprisonment and three strokes of the cane. Accordingly, the total sentence was 15 years' imprisonment and 15 strokes of the cane.

The Court of Appeal's decision

25 In the recent decision of *Azlin*, this court explained that the test set out in *Daniel Vijay* for an offence under s 300(*c*) read with s 34 Penal Code (as applied by the Judge) applies to dual crime scenarios while the test in *Virsa Singh* for an offence under s 300(*c*) by an individual offender continues to apply to single crime scenarios even in common intention cases. Manik's trial took place in 2020 and the Judge's Grounds of Decision ("GD") was delivered in August 2020. The decision in *Azlin* was delivered in July 2022. It followed that the Judge did not have the advantage of this court's guidance in *Azlin*. It was therefore not surprising that her GD did not articulate clearly whether she considered this case to involve a single crime or a dual crime situation.

26 The Prosecution accepts that the Judge's material findings of fact were largely in its favour. This includes the fact that Manik and his co-attackers had attacked the victim in like manner with choppers and that they had done so pursuant to their common intention to cause grievous hurt to the victim. The Prosecution confirms that its appeal does not lie against the Judge's findings of fact but only against her application of the law to the facts. Manik's defence was rejected by the Judge. The Prosecution contends that since Manik has not appealed against his conviction on the Substituted s 326 Charge, he must be

taken to have accepted the Judge's findings of fact. Accordingly, the Prosecution submits, the sole issue in the present appeal lies in the applicable *mens rea* test for the Common Intention Charge.

27 The Prosecution submits that it was clear from the Judge's findings that she believed the case was a single crime scenario. Her findings of fact showed that all the three attackers were involved in the criminal venture, attacked the Victim in like manner, with weapons apt to cause the very type of injury that was inflicted, in pursuance of their common intention and either Manik or Aziz inflicted the Fatal Injury directly. There was swift recourse to violence after Aziz shouted to Syndicate 1 members to "chop hard this son of a bitch". When the Victim fell, the three attackers used their choppers to hack him. Their swift recourse to violence emphasises their pre-existing common intention to use their choppers on the Victim and to cause the specific injuries. The Prosecution submits that the Judge determined correctly that the case before her was a single crime situation.

28 However, the Prosecution contends that the Judge was wrong in law when she applied the *Daniel Vijay* test to the single crime situation and concluded that the common intention element was not satisfied. This was contrary to the decision in *Azlin* where the court held (at [122(a)]) that where multiple offenders jointly commit a single offence of s 300(*c*) murder, the current state of the law is such that the *Daniel Vijay* test does not apply and there is no need for the offender who is charged with a s 300(*c*) common intention murder charge to have intended to inflict an injury that would be sufficient in the ordinary course of nature to cause death. The court in *Azlin* also stated that the *Virsa Singh* test applies in that situation and it is sufficient that the offender intended to cause the actual injury that was inflicted on the Victim. The Prosecution submits that if the Judge had applied the correct *Virsa Singh* test,

her findings of fact would have satisfied the common intention requirement and she ought to have convicted Manik on the Common Intention Charge.

29 Should this court dismiss the Prosecution's appeal against acquittal on the Common Intention Charge, the Prosecution submits that the sentence imposed for the Substituted s 326 Charge was appropriate and should be upheld. The Prosecution agrees with the sentencing approach taken by the Judge and submits that the sentence was in accord with the precedent cases.

30 Manik contends that the Judge was correct in holding that the events on the night of 24 September 2016 were a dual crime situation. Manik accepts that common intention can be formed on the spot and that it can also change on the spot, in the course of a criminal act. He submits that although it may be a fine line between single crime and dual crime situations, the difference in the present case is clear and distinct.

31 Manik submits that since the Prosecution has not appealed against the acquittal on the Original Charge where the Judge held that it was not proved beyond reasonable doubt that it was Manik who inflicted the Fatal Injury, it follows that Manik was a secondary offender. Manik submits that as the case here was a dual crime situation, the Judge's application of the *Daniel Vijay* test was correct. He agrees with the Judge that there was no motive or incentive for Manik to cause a s 300(*c*) injury on the Victim. The forensic evidence was consistent with one actor, the primary offender, being significantly more vicious than the secondary offenders. While there were many superficial wounds, there was a single deep and long wound that was inflicted with such force that the surrounding bone was fractured. The evidence showed that one primary offender participated to a significantly more aggravated degree than the secondary offenders. Further, none of the material wounds was found on

vulnerable parts of the Victim's body. The Video Footage did not show the three attackers attempting to strike at vulnerable body parts nor did it show that they started to hack the Victim immediately when he fell. The attack lasted only about nine seconds and when the Victim got up and ran away, the attackers did not give chase and Manik was the first to turn to leave.

32 Manik argues that all these facts were plainly inconsistent with an intention to cause a s 300(*c*) injury. At most, there was a common intention to inflict hurt which endangered life. While the primary offender could be liable for an offence under s 300(*c*), the secondary offenders would be liable for only s 326 read with s 34.

33 Even if the present case were a single crime situation, Manik submits that it has not been proved beyond reasonable doubt that the primary offender intended to inflict the Fatal Injury. It could have been inflicted recklessly or accidentally instead of intentionally and that would be insufficient to sustain a s 300(*c*) charge, let alone a s 300(*c*) charge read with s 34. We dispose of this point quickly by reiterating that the Judge made a clear finding that whoever inflicted the Fatal Injury did so intentionally and there could be nothing accidental about it. It is unnecessary for the purposes of this appeal for us to revisit that finding.

34 On his appeal against sentence on the Substituted s 326 Charge, Manik submits that the sentence is manifestly excessive as the Judge did not place any mitigating weight on his remorse and erred in her comparison of the severity of this case with the precedent cases. Manik asserts that he was sincerely apologetic for the way the tragedy unfolded. He had always maintained that he was involved in the confrontation and that he used a weapon. The key material disputes were the kind of weapon and the parts of the Victim that he struck. He

would have pleaded guilty had the Prosecution proceeded with a s 326 Penal Code charge from the outset instead of proceeding with a capital charge which he had no choice but to contest and on which he has been acquitted. Manik submits that his sentence ought to be not more than 12 years' imprisonment and 12 strokes of the cane.

35 As we have stated earlier, the trial took place and the Judge's decision was rendered before this court delivered judgment in *Azlin*. It was understandable therefore that the distinction between the tests for single crime situations and dual crime situations was not fully appreciated by the parties and not clearly canvassed before the Judge.

36 After studying the Judge's GD in detail, it was plain to us that the Judge actually considered this case to be a dual crime situation. This can be seen from her distinction between common intention to commit s 300(*c*) injury and common intention to commit grievous hurt. On her understanding, the primary offence was causing grievous hurt in the form of hurt which endangers life. The secondary or collateral offence was causing a s 300(*c*) injury. We accept that it is a fine line between intention to cause a s 300(*c*) injury and intention to cause grievous hurt in the form of hurt that endangers life. The line between offences such as robbery and rape or between burglary and murder is of course much clearer and much more easily defined. However, the offences in question before us remain distinct offences, even if the difference is only a matter of degree.

37 The Prosecution does not challenge the Judge's findings of fact and Manik cannot do so without an appeal against conviction on the Substituted s 326 Charge. The Judge's findings of fact therefore stand in these appeals before us. Based on these findings of fact and the decision that this was a dual crime situation, the *Daniel Vijay* test was the correct test to apply, which the Judge

did. The three attackers' common intention was to attack the Victim with choppers in order to cause grievous hurt. That was the primary offence. The Judge found that the person who inflicted the Fatal Injury did so intentionally and not accidentally. He therefore intended to inflict a s 300(*c*) injury. That was a collateral offence which went beyond the attackers' common intention. On the facts, it was not proved beyond reasonable doubt that Manik was the person who inflicted the s 300(*c*) injury and he was rightly acquitted on the Original Charge. Applying the *Daniel Vijay* test, which we think the Judge did correctly on the facts as found by her, Manik also could not be guilty on the Common Intention Charge as there was no common intention among the three attackers to inflict a s 300(*c*) injury. Further, there was no evidence that Manik specifically shared the intention of the offender who inflicted the s 300(c) injury.

38 We therefore dismiss the Prosecution's appeal in CCA 16. We pointed out to the Prosecution that the position might have been different under the test in *Lee Chez Kee v PP* [2008] 3 SLR(R) 447 instead of the *Daniel Vijay* test in a dual crime situation. Whether we should revisit the *Daniel Vijay* test is a question that will be left to be answered in a future case.

39 In respect of Manik's appeal against sentence, we need only say that we agree with the Judge's approach which is a completely sensible one. We see no error in her application of the law to the facts as found by her and we agree with the sentence that she arrived at. We therefore dismiss Manik's appeal in CCA 26 as well.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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