IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 22

Criminal Appeal No 5 of 2022

Between

Public Prosecutor

… *Appellant*

And

Muhammad Salihin bin Ismail

… *Respondent*

Criminal Appeal No 19 of 2022

Between

Public Prosecutor

… *Appellant*

And

Muhammad Salihin bin Ismail

… *Respondent*

Criminal Appeal No 23 of 2022

Between

Muhammad Salihin bin Ismail

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 6 of 2021

Between

Public Prosecutor

And

Muhammad Salihin bin Ismail

GROUNDS OF DECISION

[Criminal Law — Offences — Murder]

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v
Muhammad Salihin bin Ismail

[2024] SGCA 22

Court of Appeal — Criminal Appeals Nos 5, 19 and 23 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Debbie Ong Siew Ling JAD
2 April 2024

1 July 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 Muhammad Salihin bin Ismail ("Salihin"), the stepfather of the deceased, Nursabrina Agustiani Abdullah (the "Victim"), claimed trial to a charge of murder under s 300(*c*), punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") for causing the death of the Victim. The charge arose from two incidents on 1 September 2018, during which Salihin allegedly punched and kicked the Victim in her abdomen, leading to intra-abdominal bleeding which resulted in the Victim's death on 2 September 2018.

2 The murder charge reads:

> That you, [Salihin], sometime between the 1st day of September 2018 at or about 9.00 a.m., and the 2nd day of September 2018 at or about 9.40 a.m., at Block 447A, Bukit Batok West Avenue 9 #14-124, Singapore, did commit murder by causing such bodily injury as is sufficient in the ordinary course of nature to

> cause the death of [the Victim], and you have thereby committed an offence under section 300(*c*) and punishable under section 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

3 On 1 March 2022, after trial, the Judge of the General Division of the High Court (the "Trial Judge") acquitted Salihin on the s 300(*c*) charge. Invoking the court's powers under s 141 of the Criminal Procedure Code 2010 (2020 Rev Ed), the Trial Judge amended the charge to a lesser offence of voluntarily causing grievous hurt under s 325 of the PC (the "s 325 Charge") and convicted Salihin accordingly. Two other charges were taken into consideration for the purposes of sentencing:

(a) a charge under s 324 of the PC for voluntarily causing hurt to the Victim by means of a heated substance during an incident sometime between July and October 2017 when Salihin intentionally scalded the Victim's back with hot water while showering her; and

(b) a charge under s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") arising from an incident sometime between January and April 2018 when Salihin ill-treated the Victim by slamming her head against the floor.

Salihin was sentenced to nine years' imprisonment and 12 strokes of the cane, with the commencement of the imprisonment term backdated to the date of his arrest on 3 September 2018.

4 In CA/CCA 5/2022 ("CA 5"), the Prosecution appealed against the Trial Judge's decision to acquit Salihin on the s 300(*c*) charge. CA/CCA 19/2022 ("CA 19") and CA/CCA 23/2022 ("CA 23") are the appeals by the Prosecution and by Salihin respectively against the sentence imposed for the s 325 Charge.

5 After hearing the parties on 2 April 2024, we allowed the Prosecution's appeal in CA 5 against the acquittal of Salihin on the murder charge under s 300(*c*) of the PC. In our brief oral remarks at the conclusion of the hearing, we noted that there was no question that Salihin intended to kick the Victim and that he had intended to do so with exceptional force. Once this was established, there was no need for the Prosecution to go further to show that Salihin knew, much less that he intended, the specific medical consequences of his actions. As this Court observed in *Public Prosecutor v Lim Poh Lye* [2005] 4 SLR(R) 582 ("*Lim Poh Lye*") at [47], what is required under the "*Virsa Singh* test" as set out in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") is not whether Salihin intended to kill or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question. In our view, it was clear that Salihin intended to kick the Victim in the stomach. We therefore allowed the Prosecution's appeal and convicted Salihin on the murder charge. We sentenced him to life imprisonment and 12 strokes of the cane. As a result, the respective appeals against sentence on the s 325 PC charge became irrelevant.

Factual background of the case

6 The background facts are set out in the Trial Judge's grounds of decision in *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 (the "GD") at [4]–[20]. We set out the salient facts necessary for the disposal of the present appeals.

7 Salihin was the Victim's stepfather. He is married to the Victim's biological mother, Syabilla Syamien Riyadi ("Syabilla"). At the time of the incidents in the murder charge, the Victim was slightly more than four years old.

8 Salihin and Syabilla also had two biological twin boys born in November 2016 ("the Twins"). They were about one year and nine months old at the material time. Salihin, Syabilla, the Victim and the Twins lived together in a rental flat ("the Flat") (GD at [4]).

The first incident where Salihin used force against the Victim at 10.00am

9 At about 10.00am on 1 September 2018, Salihin noticed a puddle of urine outside the toilet of the Flat. Salihin became angry because he thought that the Victim, who had already been toilet-trained, was misbehaving. Salihin called the Victim to the toilet and placed her on the toilet bowl. While it was undisputed that Salihin, after having placed the Victim on the toilet bowl, applied some force on the Victim's abdomen with his knuckles, the parties disputed the nature of this force. Specifically, the contention was whether the force applied by Salihin on the Victim's abdomen consisted of punches, as alleged by the Prosecution, or whether it was mere nudges, as the Defence alleged. The force was applied to allegedly stop the Victim from getting off the toilet bowl. After this incident, Salihin went out of the toilet and left the Victim there alone (GD at [6]).

The second incident where Salihin used force against the Victim at 3.00pm

10 Later that day, at about 3.00pm, the Victim indicated to Salihin that she wanted to go to the toilet. Salihin asked the Victim to go to the toilet to urinate on her own. The Victim went into the toilet and left the toilet a while later. After she left the toilet, Salihin went into the toilet and saw that the Victim had urinated again on the floor in front of the toilet bowl. He became angry, called the Victim over and questioned her about the urine on the floor.

11 Salihin then pushed the Victim on the left shoulder, causing her to fall sideways to the floor. While the Victim was lying on her side on the floor, Salihin kicked the Victim's abdomen twice with his right leg while barefoot. This part of the 3.00pm incident was undisputed. Salihin admitted to pushing the Victim and kicking her abdomen twice during that incident (GD at [7]).

12 After the kicks, Salihin picked the Victim up and placed her on the toilet bowl. It was undisputed that after Salihin placed the Victim on the toilet bowl, he applied force on the Victim's abdomen with his knuckles a few times. However, there was again disagreement between the parties as to whether the force applied consisted of punches or nudges (GD at [8]).

The Victim's death

13 On the night of 1 September 2018 and in the early hours of 2 September 2018, the Victim vomited periodically (GD at [11]). On 2 September 2018, at about 8.00am, Salihin brought the Victim to the toilet where she tried to vomit into the toilet bowl. Noticing that the Victim had difficulty vomiting, Salihin used his index finger to ease her vomiting. The Victim then vomited and became unconscious. Salihin carried the Victim out of the toilet and informed Syabilla that the Victim was no longer breathing. He asked Syabilla to call for an ambulance. Syabilla asked Salihin to perform cardiac pulmonary resuscitation ("CPR") on the Victim and he did so for about 15 minutes until the paramedics arrived at about 9.28am (GD at [11]).

14 The Victim was subsequently conveyed to the Accident and Emergency Department of Ng Teng Fong General Hospital and arrived there at about 9.44am. On medical examination, she was not breathing and there was no

heartbeat. After resuscitation efforts failed, the Victim was pronounced dead at 10.12am on 2 September 2018 (GD at [13]).

15 According to the autopsy report dated 17 September 2018 (the "Autopsy Report") prepared by Dr Gilbert Lau ("Dr Lau"), the forensic pathologist, the certified cause of death was "haemoperitoneum due to blunt force trauma of the abdomen". Dr Lau concluded that "Death was due primarily to intra-abdominal haemorrhage, amounting to 300ml of blood within the peritoneal cavity (haemoperitoneum), largely attributable to traumatic disruption of the greater omentum and severe bruising." He opined further that the intra-abdominal injuries, taken together, "would be consistent with the infliction of blunt force trauma to the abdomen, such as that caused by a fist blow, or multiple fist blows".

The Trial Judge's reasoning

16 Based on the parties' submissions, the Trial Judge observed that four broad issues arose for his determination (GD at [26]).

17 The first issue was whether the force applied by Salihin during the 10.00am incident and the 3.00pm incident consisted of fist blows or nudges. The Trial Judge accepted the Defence's case that the force applied by Salihin during the 10.00am and 3.00pm incidents consisted of nudges to prevent the Victim from leaving the toilet seat. The Trial Judge accepted Salihin's testimony and noted that Salihin's demonstration in court of how his hand looked like when he nudged the Victim was not in the shape of a clenched fist and was consistent with the hand gesture that he showed the police during investigations (GD at [29]). The Trial Judge was not convinced by the Prosecution's attempt to rely on Salihin's 3 September 2018 statement recorded

by Assistant Superintendent Mahathir bin Mohamad ("ASP Mahathir"), which states that he "punch[ed]" the Victim. The Trial Judge gave little weight to ASP Mahathir's explanation in court, given his limited involvement in the investigations and the fact that Salihin's subsequent statements all indicated that he had "nudged" the Victim. Further, given the Victim's small body frame, if Salihin had indeed punched her, she would likely have fallen into the toilet bowl and that did not happen (GD at [32]–[36]).

18 Second, the Trial Judge considered the question of how the "bodily injury" for the purposes of the *Virsa Singh* test is identified for an offence under s 300(*c*) of the PC where there are multiple contributory causes to the injury that resulted in the victim's death. Specifically, does "bodily injury" refer to the composite injury found on the victim at the time of his or her death or should it be the injury that was actually caused by or attributable to the accused person?

19 According to the Trial Judge, this was a question of law on the scope of the *Virsa Singh* test. The Trial Judge agreed with the Defence that in a case where there are multiple contributory causes in relation to the fatal injury, the "bodily injury" identified in the *Virsa Singh* test refers only to the specific injury which was caused by the accused and cannot simply be the composite injury or fatal injury found on a victim (GD at [39]). The Trial Judge then considered what was the injury caused by the accused. He opined that this required the court to assess whether there were other contributory causes of the intra-abdominal injuries found on the Victim. The Trial Judge observed that it was undisputed that intra-abdominal injuries were caused by blunt force trauma to the Victim's abdomen (GD at [57]). He went on to consider if there were other sources of blunt force trauma, apart from Salihin's kicks, which amounted to contributory causes of the intra-abdominal injuries. In the light of the expert evidence adduced, the Trial Judge found that the three other purported

contributory causes, comprising the Twins bouncing on the Victim's abdomen (GD at [61]–[63]), Salihin's application of CPR on the Victim (GD at [64]–[66]) and the Victim's vomiting (GD at [67]–[68]), had a negligible effect in causing the Victim's intra-abdominal injuries. In the circumstances, Salihin's kicks were the sole cause of the Victim's intra-abdominal injuries.

20 The third issue was whether the injuries inflicted by Salihin were done with the requisite *mens rea*. The Trial Judge accepted the Defence's case that Salihin did not intend to inflict the intra-abdominal injuries on the Victim. Rather, Salihin had inflicted the two kicks in quick succession while carried away by his anger towards the Victim. He did not kick the Victim to strike the part of the Victim's body where the intra-abdominal injuries were later found and he also did not have the intention to kick with sufficient force to cause the sort of injuries that eventually came to be found on the Victim (GD at [74]). The Trial Judge reasoned that this was because the kicks were not premeditated (GD at [75]) and the sequence of events leading to the kicks happened so quickly that Salihin could not have formed the intention to strike at any part of the Victim's body with sufficient force to cause the intra-abdominal injuries (GD at [75]).

21 The fourth issue was whether the injuries inflicted by Salihin were sufficient in the ordinary course of nature to cause death. The Trial Judge accepted that the intra-abdominal injuries were sufficient in the ordinary course of nature to cause death based on Dr Lau's expert evidence (GD at [85]). The Trial Judge rejected the Defence's reliance on medical literature which suggested that the Class II haemorrhage injuries found on the Victim would not in the ordinary course of nature cause death. This was because the literature was based on the false premise that there would have been timely medical intervention. The law requires the probability of death to be determined without reference to the availability of timely medical intervention (GD at [88]).

22 The Trial Judge's finding that Salihin's lacked the intention to cause the intra-abdominal injuries on the Victim meant Salihin had to be acquitted on the murder charge (GD at [89]). Given the Trial Judge's finding that Salihin had kicked the Victim as a spontaneous response to his anger and did not intend to cause the intra-abdominal injuries, the Trial Judge also could not convict Salihin of culpable homicide not amounting to murder under s 299 of the PC because that required an intention to cause such bodily injury as was likely to cause death. Instead, the Trial Judge convicted Salihin of voluntarily causing grievous hurt under s 325 of the PC (GD at [92]).

23 In sentencing Salihin for the offence under s 325 of the PC, the Trial Judge took into consideration the following two outstanding charges (GD at [93]):

(a) a charge of voluntarily causing hurt to the Victim by means of a heated substance under s 324 of the PC arising from an incident sometime between July and October 2017 when Salihin intentionally scalded the Victim with hot water while bathing her.

(b) a charge of child abuse under s 5(1) of the CYPA arising from an incident sometime between January and April 2018 when Salihin ill-treated the Victim by slamming her head against the floor.

24 The Trial Judge applied the two-step sentencing framework set out in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [55]–[56]. The appropriate starting point was eight years and 12 strokes of the cane since death was caused (GD at [103]). Having considered the manner of the attack, the Victim's vulnerability, Salihin's antecedents and his remorse, the Trial Judge sentenced Salihin to nine years' imprisonment and 12 strokes of the cane, with

the sentence backdated to 3 September 2018, the date of Salihin's arrest (GD at [114]).

The Prosecution's submissions

25 In the Prosecutions' appeal against Salihin's acquittal on the murder charge in CA 5, the sole basis of the Prosecution's appeal is that the Trial Judge erred in finding that Salihin lacked the intention to cause the Victim's bodily injuries.

26 In the Prosecution's appeal against Salihin's sentence on the s 325 PC charge, the Prosecution submitted that the nine years imprisonment ought to be enhanced because the Trial Judge erred in law and fact by finding that Salihin's delay in seeking medical attention for the Victim was not an aggravating factor.

27 In respect of Salihin's appeal against sentence on the s 325 PC charge, the Prosecution submitted that Salihin's primary ground of appeal was that the present case was distinguishable from the more severe assaults in *BDB*. However, the Prosecution had agreed with the Defence before the Trial Judge that Salihin's actions were not as severe and brutal as those in *BDB*. The Trial Judge took this and other factors cited by the Defence into account in sentencing and there was therefore no basis for the sentence to be reduced.

The Defence's submissions

28 The Defence submitted that the Trial Judge was correct to acquit him on the murder charge. This was because the Trial Judge found correctly that Salihin's use of force against the Victim in both the 10.00am and 3.00pm incidents were nudges and not punches. On this premise, the Defence repeated its closing submissions before the Trial Judge that the medical evidence showed

that there was reasonable doubt whether the nudges at 10.00am and 3.00pm caused the intra-abdominal injuries.

29 The Defence maintained its position that the following were the other contributory causes of the intra-abdominal injuries:

(a) an incident where the Twins bounced on the Victim's abdomen a few times, which took place at around 7.00pm on 1 September 2018 ("Twins Bouncing Incident");

(b) the intra-abdominal pressure caused by the Victim's vomiting in the night of 1 September 2018 and in the early hours of 2 September 2018 ("Vomiting Incidents"); and

(c) Salihin's erroneous application of CPR on the Victim's abdomen ("CPR Incident").

30 The Defence submitted that the Trial Judge erred in finding that these contributory causes bore a negligible causative effect on the Victim's intra-abdominal injuries. If this Court agreed that there were multiple causes of the intra-abdominal injuries, then the Court must identify the specific injuries caused by Salihin which would be part of the Victim's composite intra-abdominal injuries under the *Virsa Singh* test. The Prosecution did not lead any credible evidence on the intra-abdominal injuries caused specifically by Salihin during the 10.00am and 3.00pm incidents. Therefore, the Prosecution's case must fail.

31 In any event, even if this Court disagreed with the Defence's submissions that there were other contributory causes of the intra-abdominal injuries, the Trial Judge was correct to find that Salihin lacked the intention to

cause the bodily injuries present on the Victim. The two planks of the Trial Judge's reasoning were sound: (a) Salihin did not intend to strike at any part of the Victim's body and (b) Salihin did not intend to strike the Victim with sufficient force to cause the intra-abdominal injuries.

32 In respect of Salihin's appeal against sentence for the s 325 Charge, the Defence's contentions related only to the imprisonment term of nine years which the Trial Judge imposed. The Defence did not contest the number of the strokes of the cane imposed.

33 The Trial Judge was correct to reject the Prosecution's submissions that Salihin delayed seeking medical attention for the Victim. Nevertheless, the Trial Judge's sentence was manifestly excessive. In *BDB*, the Court had the option to impose consecutive sentences. *BDB* is also distinguishable from the present case in numerous aspects which the Trial Judge did not give sufficient weight to. These included factors such as a biological relationship, a pattern of cruelty, the presence of many other injuries and prior intervention by the Child Protection Service. The sentence imposed here should be less than the sentence imposed in *BDB* (which was nine years and an additional six months in lieu of caning). The Defence submitted that an imprisonment term of 7.5 years would be appropriate.

Our decision

The other purported contributory causes

34 In our judgment, the contention about whether Salihin punched or nudged the Victim during the 10.00am and 3.00pm incidents was an irrelevant argument. Once it was proved that the blunt force which caused the Victim's injuries, whether in the form of kicks, punches or nudges, originated from the

accused, the conclusion that Salihin's acts were a cause of the intra-abdominal injuries was inescapable. The real factual question was whether there were other contributory causes of the intra-abdominal injuries which were not attributable to Salihin.

The Twins Bouncing Incident

35 In respect of The Twins Bouncing Incident, the Trial Judge reasoned that the incident had a negligible contributory effect on the Victim's intra-abdominal injuries. Dr Cheah Sue Mei's ("Dr Cheah") evidence was that small children like the Twins who play together generally do not achieve a significant bounce on each other. Any such bouncing would also not be considered a high impact or high velocity activity that would cause significant trauma. Further, Dr Lau also opined that any contribution by the Twins' bouncing to the Victim's intra-abdominal injuries "would have been very miniscule or even negligible". This was corroborated by Salihin's own testimony in court when he stated that he regarded the incident as children "just playing with each other and it is not serious".

36 The Defence contended that the expert evidence was about what would have happened generally, as opposed to the specific facts of the present case. Salihin's purported concession (at [35] above) related to his subjective appreciation of the incident and was not objective evidence on whether the Twins' bouncing was forceful. The Defence contended that the Trial Judge should have considered the relative weight of the Twins at 11kg each and the underweight Victim's weight at 12kg and that during the incident, one of the Twins sat on the Victim's abdomen and jumped by lifting himself off the ground and then landing on the Victim's abdomen. Syabilla (the Victim's mother) had testified that there were at least two incidents where she witnessed the Twins

sitting on the Victim's stomach and five or six instances of the Twins sitting on the Victim's stomach and bouncing forcefully. More weight should be accorded to her testimony as opposed to that from third parties who could only speak in general assumptions.

37 In our judgment, the Trial Judge's findings based on the expert evidence were not plainly wrong. The evidence of Dr Cheah did not appear to have been made in the abstract. On the contrary, Dr Cheah was asked how the weight of the Twins and the bouncing motion on the Victim would have factored in his assessment:

> Q So, in that context, so we have a 12-year-old---sorry. 12kg 4-year-old and two twins who are each 11kg. Based on your expertise and experience, can you tell us how likely it is that serious or significant internal injuries would be caused by the two twins sitting or bouncing on [the Victim's] stomach?
>
> A Okay. As mentioned, within my professional expertise, I feel it is very unlikely that significant intra-abdominal trauma would have been caused even with this size younger twins sitting or bouncing on the victim's stomach.
>
> Q And can you just tell us why you say that?
>
> A Again, as mentioned, for a 4-year-old, they would be able to discourage or fend off any younger children who are playing with them too roughly or with the kind of force that is required to cause significant harm.
>
> Q And does the fact that there were two twins, perhaps they were both sitting or bouncing on [the Victim's] stomach at the same time, make a difference to your opinion?
>
> A No, it does not make any difference to my opinion. As mentioned, bouncing even on top of another child is not usually we considered a high impact, high velocity activity that would cause significant intra-abdominal trauma.

38 The same could be said for Dr Lau's evidence when he was asked to provide his views on the likelihood of the bouncing incident contributing to the intra-abdominal injuries. Incidentally, Salihin clarified that only one twin was

involved in the bouncing, while the other twin was laughing and clapping at the side. Dr Lau maintained his view that the likelihood was low even if both twins were bouncing on the Victim's stomach.

The CPR Incident

39 On the CPR Incident, the Trial Judge found that Salihin's incorrect application of CPR on the Victim's abdomen as opposed to her chest and using two hands instead of two fingers, as is recommended for a young child like the Victim, had contributed negligibly to the intra-abdominal injuries (GD at [64]). In reaching this conclusion, the Trial Judge noted that Salihin's testimony in court was that he had performed CPR on the Victim's chest. The contention that CPR was performed on the Victim's abdomen was therefore not supported by the evidence. The Trial Judge acknowledged Dr De Dios' evidence that the use of both hands for CPR on a child had a chance of compressing the abdomen (GD at [66]). The Trial Judge noted that Dr Lau agreed that this could cause internal injuries. However, the Trial Judge accepted Dr Lau's clarification that since Salihin would have been performing CPR after the Victim's breathing and circulation had stopped, any resulting injury would have been peri-mortem or post-mortem. In contrast, the injuries he observed during the autopsy were ante-mortem injuries. Dr Lau considered that any contribution from the misapplication of CPR would likely have been negligible. The Trial Judge concluded that any contributory effect to the injuries from Salihin's use of both hands on the Victim's chest was also negligible.

40 The Defence contended that the Trial Judge's reliance on Dr Lau's follow-up explanation regarding the post-mortem nature of any injuries during CPR was in error since Dr Lau's evidence was based on the assumption that the Victim was already dead when CPR was attempted. According to the Defence,

this conclusion was based on the further assumption of the Victim's lack of pulse. While Dr Lau stated on the stand that there could be assumed to be no circulation given that the Victim was not breathing then, the Defence argued that no explanation of this was provided. Accordingly, the Defence submitted that "it was possible" that there was still some spontaneous circulation of blood at the time of the CPR.

41 We disagreed with the Defence that the Trial Judge accepted Dr Lau's evidence in error. Dr Lau had considered that it was not expected that untrained laypersons would palpate the neck of an unconscious person for a pulse. According to Dr Lau, it could be assumed that where there was lack of breathing, it would be accompanied by lack of spontaneous circulation. However, the more important aspect of Dr Lau's evidence was his opinion regarding the extensiveness of the internal bleeding observed in the Victim. That could not be explained by the misapplication of CPR. It could only be explained by the kicks and/or punches inflicted by Salihin on the Victim.

Vomiting Incidents

42 Finally, in relation to the Vomiting Incidents, the Trial Judge rejected the contention that the Victim's vomiting after dinner on 1 September 2018 and on several occasions in the early hours of 2 September 2018 had an effect on the intra-abdominal injuries. The Defence's sole case on appeal was to repeat its submissions at the trial that Dr Cheah's unchallenged evidence was that vomiting could exacerbate existing intra-abdominal injuries.[1]

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[1] AWS at para 74; Defence's Closing Submissions filed in HC/CC 6/2021 dated 22 June 2021 at para 77.

43 However, the Trial Judge had acknowledged Dr Cheah's evidence that the Victim's vomiting would have been a source of intra-abdominal pressure that might have aggravated existing internal abdominal injuries if any were present. Just as it was for the Twins Bouncing Incident and the CPR Incident, the Trial Judge failed to see how the expert's answers could have pointed to a non-negligible effect of the Vomiting Incidents.

44 The Trial Judge pointed out at [68] of his GD that the Victim's vomiting was a natural symptom and consequence of the injuries inflicted by Salihin's kicks and therefore, it could not be regarded as an independent cause of the Victim's intra-abdominal injuries. We agreed with this observation. We therefore held that the Trial Judge rightly rejected the Vomiting Incidents as a contributory cause of the Victim's intra-abdominal injuries.

Observations on the question of whether the Prosecution's case necessarily fails where the court is not able to identify and isolate the injuries inflicted by the accused from injuries arising from other causes

45 We note that the Trial Judge conducted an extensive discussion on the point of law regarding the approach to be taken in identifying the "bodily injury" for the *Virsa Singh* test where there are multiple causes of the fatal injury. Essentially, the Trial Judge agreed with the Defence that if it were the case that there were multiple contributory causes to the fatal injury, the "bodily injury" identified for the purposes of the *Virsa Singh* test must be that which was caused by the offender and could not be the composite injury or fatal injury found on the victim (GD at [39]). The Defence therefore maintained on appeal that if we agreed that there were multiple causes of the intra-abdominal injuries, then we must identify the specific injury caused by the appellant which was part of the Victim's composite intra-abdominal injuries under the *Virsa Singh* test. The Defence averred that since the Prosecution did not lead any credible evidence

regarding the portion of the intra-abdominal injuries caused specifically by Salihin during the 10.00am and 3.00pm incidents, its case must fail.

46 However, this case did not concern multiple causes of the injuries. Once we excluded the possibility that the Twins Bouncing Incident, the CPR Incident and the Vomiting Incidents were contributory causes, the cause of the Victim's intra-abdominal injuries could only have been the actions of Salihin.

The intra-abdominal injuries were sufficient in the ordinary course of nature to cause death

47 The Defence suggested in its closing submissions at the trial that this was a case where the internal abdominal injuries were not sufficient in the ordinary course of nature to cause death. Essentially, the Defence argued that there was a reasonable doubt as to whether the intra-abdominal injuries were sufficient in the ordinary course of nature to cause death. The Defence relied on medical literature that it had adduced as evidence during the trial and also the evidence of the Prosecution's witnesses which stated that death did not inevitably follow from what it referred to as a "Class II haemorrhage injury", that is, one involving the loss of 15% to 30% of a person's circulating blood volume. Since the intra-abdominal injuries caused the Victim to lose 300ml of blood, which was about 30% of her circulating blood volume, this was a Class II haemorrhage injury and it followed that it would not inevitably result in death.

48 On appeal, the Defence decided not to challenge the Trial Judge's finding that the injuries were sufficient in the ordinary course of nature to cause death. We agreed with the Trial Judge's finding in any event. Even if a Class II haemorrhage injury did not inevitably lead to death, the question was whether there was a sufficient probability of death ensuing in the ordinary course of nature, not that it must inevitably happen. As the Trial Judge noted in his GD

(at [84] and [88]), in determining whether death would have resulted in the ordinary course of nature, the probability of death is to be determined without reference to the availability of timely medical intervention or the possibility that the victim may have survived if medical treatment had been rendered: see *In re Singaram Padayachi and others* (1944) AIR Mad 223 at 225.

49 To illustrate, if an assailant inflicted severe wounds on a victim and left the injured victim bleeding. Two hours later, the victim died because of the bleeding. In this hypothetical, it could not be said that this was not an injury which was sufficient in the ordinary course of nature to cause death merely because death could have been avoided had a good Samaritan come across the victim minutes after the assault and promptly rendered or called for medical assistance. If the inquiry into a s 300(*c*) injury contemplates the possibility of intervention by timely and effective medical assistance, it would set the bar for a conviction under s 300(*c*) of the PC impossibly high as one could always contend that such timely and effective medical intervention could have averted the victim's death.

50 Instead, the law requires that when we consider whether an injury is sufficient in the ordinary course of nature to cause death, the court is to consider whether death was "highly probable" in the absence of medical intervention: *Public Prosecutor v Azlin bte Arujunah and another* [2020] SGHC 168 ("*Azlin (HC)*"). Therefore, where death ensued from an injury, as was the case here, all that the Prosecution had to show was that the evidence pointed to a "high probability of death in the ordinary course of nature": *Azlin (HC)* citing *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 at [33]. Dr Lau's expert evidence was unequivocal that there was such a high probability of death and the Trial Judge was correct in accepting Dr Lau's evidence (GD at [85]).

Nothing in the Defence's case raised a reasonable doubt concerning this high probability of death from the intra-abdominal injuries in the present case.

Whether Salihin intended to inflict the intra-abdominal injuries found on the Victim

51 The crux of the present appeal was whether Salihin possessed the requisite intention to inflict the bodily injuries on the Victim within the scope of s 300(*c*) of the PC. At the conclusion of the hearing of this appeal, we found that the Trial Judge was incorrect in his understanding and application of *Virsa Singh*.

52 To recapitulate, the Trial Judge began his analysis on the requirement of *mens rea* in his GD at [78] by finding that both kicks that Salihin had inflicted on the Victim were intentional but merely "in the sense that they were voluntary". This meant that the kicks were the result of Salihin's decision to kick the Victim while she was lying on the floor after she had fallen down as a result of Salihin's push. The Trial Judge then proceeded to find that Salihin did not intend to cause the specific intra-abdominal injuries that were found on the Victim. We disagreed with this analysis.

*The applicable principles in assessing whether there was an intention to inflict bodily injury for the purposes of s 300(*c*) of the PC*

53 As this court observed in *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] 2 SLR 825 ("*Azlin (CA)*") at [75], what is required under s 300(*c*) of the PC is that the accused person had the requisite intention to cause the particular injury that was in fact inflicted on the victim. In *Virsa Singh*, it was made clear that the particular injury inflicted must not be accidental or unintentional (at [24]):

> Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

54 In determining whether the accused person had the requisite intention to cause the particular injury actually inflicted, the focus of the inquiry is directed at the nature and the character of the physical acts done by the accused person. In this case, did he intend to kick the child? Did he intend to do so with the sort of force that he did in fact apply? Once it was established that the accused person had intended to inflict the particular bodily injury found on the victim, there was no need for the Prosecution to go further to show that the accused person knew, much less that he intended, the specific medical consequences of his actions.

55 The point above was made succinctly by the court in *Lim Poh Lye* at [47], where, citing *Virsa Singh* at [18], it stated that "whether the accused knew of its seriousness or intended serious consequences is neither here nor there. The question so far as the intention is concerned is not whether the accused intended to kill or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question". In *Lim Poh Lye*, the court said (at [22]–[23]):

> 22 As stated in *Virsa Singh*, for an injury to fall within s 300(*c*), it must be one which, in the normal course of nature, would cause death and must not be an injury that was accidental or unintended, or that some other kind of injury was intended. Whether a particular injury was accidental or unintended is a question of fact which has to be determined by the court in the light of the evidence adduced and taking into account all the surrounding circumstances of the case. If the court should at the end of the day find that the accused only intended to cause a particular "minor injury", to use the term of the court in *Tan Joo Cheng*, which injury would not, in the normal course of nature, cause death, but, in fact caused a different injury sufficient in the ordinary course of nature to cause death, cl (c) would not be attracted.

> 23 It would be different, if the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury. Thus, if the offender intended to inflict what, in his view, was an inconsequential injury, where, in fact, that injury is proved to be fatal, the offender would be caught by s 300(*c*) for murder. …

56 On the facts of *Lim Poh Lye*, the fatal injury was a stab wound to the victim's right leg which severed the right femoral vein, a major blood vessel, which caused uncontrolled and continuous bleeding that eventually caused the victim's death. As this court observed in *Azlin (CA)* (at [80]), "[t]his court reversed the trial judge's decision on the basis that s 300(*c*) murder did not require an intention on the accused persons' part to cut the victim's right femoral vein. Rather, all that was required was an intention to cause that *stab wound* to the victim" (emphasis in original). Thus, this court stated in *Azlin (CA)* (at [81]) that *Lim Poh Lye* stood as clear authority that what is required under s 300(*c*) of the Penal Code is that the accused person intended to cause the particular injury that was in fact inflicted on the victim, rather than any bodily injury. Accordingly, the accused in *Lim Poh Lye* did not need to intend that the stab wound would cut the victim's right femoral vein and so cause the uncontrolled bleeding that led to the victim's death. All that was required under the *Virsa Singh* test was an intention to cause the stab wound to the victim's right leg.

57 Before we explain why we disagreed with the Trial Judge's finding that Salihin did not intend to inflict the intra-abdominal injuries on the Victim, we note that the Trial Judge delivered his decision on 9 May 2022. On 12 July 2022, the Court of Appeal delivered its decision in *Azlin (CA)*. In that decision, the court discussed the *mens rea* required of the secondary offender for the purposes of imposing constructive liability for a s 300(*c*) charge under s 34 of the Penal Code. It clarified the principles which were applicable in assessing the requisite intention to cause the particular injury for the purposes of s 300(c) of the PC.

Perhaps, if the Trial Judge had the benefit of studying this court's decision in *Azlin (CA)* before he made his decision, he might have come to a different conclusion on the s 300(*c*) charge in this case.

Salihin intended to inflict the intra-abdominal injuries on the Victim

58 To recapitulate, the primary pillar of the Trial Judge's reasoning on why Salihin lacked the necessary intention was because he accepted the Defence's case that Salihin was very angry with the Victim during the 3.00pm incident and so, after pushing the Victim onto the floor, he just kicked whatever was in front of him. The object in front of him happened to be the Victim's abdomen (GD at [74]). Accordingly, the Trial Judge arrived at these conclusions: (a) Salihin did not kick the Victim with the intention to strike the part of the Victim's body where the intra-abdominal injuries were later found and (b) he also did not have the intention to strike with sufficient force to cause the sort of injuries that eventually came to be found on the Victim when he inflicted the kicks.

59 The Trial Judge's reasoning can be summarised as follows:

> (a) First, the 3.00pm incident was entirely unpremeditated. It was triggered by the Victim's urination on the floor which resulted in Salihin losing his temper. While Salihin first pushed the Victim, there was no evidence showing that it was done for him to target a specific part of the Victim's body in his kicks (GD at [75]). The entire sequence of events happened so quickly that Salihin could not have formed the intention there and then to strike at any part of the Victim's body with sufficient force as to cause the intra-abdominal injuries, especially since the incident was a result of Salihin's spontaneous response after he got angry with the Victim's urination on the floor and then not answering when questioned by Salihin (GD at [75]).

(b) Second, the Trial Judge considered it material that Salihin had asked the Victim where exactly on her abdomen she felt pain when he applied ointment for her, thus showing that he did not know where exactly his kicks had landed and that his kicks were a spontaneous angry reaction.

60 The Trial Judge's view was that Salihin did not intend his kicks to connect with any particular part of the Victim's body. In Salihin's statement of 3 September 2018, he stated, "Using my right leg, I gave her two hard kicks on her stomach. The reason why I targeted her stomach was that she had so much problem peeing or passing motion. I wanted to teach her a lesson". Salihin denied using the word "targeted". While the Trial Judge found that Salihin did use the word "targeted" when giving the above statement, the Trial Judge did not consider this to be significant because it did not appear again in Salihin's subsequent statements (GD at [81]). The Trial Judge maintained his view that Salihin only happened to kick the Victim's abdomen "because she fell in the way she did".

61 We disagreed with the Trial Judge's view. On the totality of the evidence, it was clear that Salihin intended to kick the Victim in the stomach because he wanted to teach her a lesson. Salihin had accepted under cross-examination that when he kicked the Victim, he had done so to cause her stomach pain in order to teach her a lesson. The statement of 3 September 2018 also put it beyond argument that Salihin intended to inflict the injuries found on the Victim.

62 The photographs of the re-enactment of the incident demonstrated the approximate size of the Victim, her proximity to Salihin and their relative positions within the toilet. These also pointed firmly to the conclusion that the

kicks to the Victim's stomach in the very limited space in the toilet could not have occurred by chance.

63 Even if we accepted that the Trial Judge's view that Salihin did not intend to connect with any particular part of the Victim's body, Salihin did intend to kick the Victim who was prone on the floor a short distance from him. In these circumstances, the highest case which could be mounted was that Salihin was indifferent as to which part of her body he struck. Mr Suang Wijaya, Salihin's defence counsel, suggested that this would have amounted at best to rashness. In our judgment, if Salihin had kicked the Victim with force, not bothering which part of her body his kicks would land on, then he must have intended to kick her wherever his kicks happened to land on. Two hard kicks delivered with force in close proximity to the Victim who had fallen to the ground in front of him could not be said to be mere rashness. The fact that Salihin kicked the Victim twice without aiming specifically at any part of her body, assuming this were true, could not change the fact anyway that the injuries were inflicted intentionally by him.

64 The Trial Judge also found that Salihin did not kick the victim with the intention to strike with sufficient force to cause the intra-abdominal injuries. Mr Suang Wijaya accepted that Salihin did, in fact, kick the Victim with exceptional force. In our judgment, the Trial Judge's conclusion that Salihin did not intend to strike with sufficient force to cause the injuries found on the Victim was a consequence of his mistaken view that it was relevant to consider whether Salihin knew or intended to inflict the specific medical consequences of his actions. To reiterate, what is required for a conviction under s 300(*c*) of the PC is only an intention to inflict the particular injuries found on the Victim and not the specific medical manifestations of those injuries in the form of the

haemoperitoneum which resulted from the blunt force trauma to the Victim's abdomen.

65 In any case, the conclusion that Salihin did not kick the victim with the intention to strike with sufficient force to cause the intra-abdominal injuries would have been inconsistent with Salihin's description in his statements to the police that the kicks were "hard kicks" and "forceful". Salihin also admitted that when he kicked the Victim, he wanted to "intentionally" cause her stomach pain to discipline her and teach her a lesson. Although the Trial Judge decided that Salihin kicked the Victim "spontaneously and without targeting the Victim's abdomen", he also stated that Salihin kicked her "with considerable force". He opined further that the fact that considerable force was used was simply an unfortunate consequence of Salihin's anger.

66 To summarise, if an offender intended the particular injury which he inflicted on the victim, it is irrelevant whether the offender knew of the seriousness of the injury inflicted or if he did not intend the injury to be as serious as it turned out to be: *Azlin (CA)* at [82], citing *Lim Poh Lye* at [41]–[47]. Quite clearly, Salihin intended to strike the part of the Victim's body where the intra-abdominal injuries were found and also intended to kick with the kind of force that was used on the Victim. He therefore intended to inflict the intra-abdominal injuries on the Victim.

67 One critical aspect of the Trial Judge's reasoning was that the requisite intention was not made out because the kicks were a spontaneous response resulting from Salihin's anger (GD at [78]). However, an angry person who kills another spontaneously in a fit of rage is fully liable for his actions unless he can invoke the defences specified in the Penal Code such as private defence or the partial defences of sudden fight or grave and sudden provocation and/or

diminished responsibility. The Defence did not rely on any of the defences specified by law. The fact that a crime was committed in a fit of anger does not mean that the person was unable to make rational decisions at that time. The law expects individuals to be in control of their emotions and actions, even when experiencing intense anger, and to accept the consequences if they fail to do so: see *BDB* at [94].

Conclusion

68 For the reasons set out above, we allowed the Prosecution's appeal in CA 5 against the acquittal of Salihin on the murder charge under s 300(*c*) of the Penal Code and convicted Salihin on the said murder charge. In the light of this, the appeals against sentence in CA 19 and 23 became irrelevant as they were premised on Salihin's conviction on the amended charge under s 325 of the Penal Code. We therefore made no order in CA 19 and 23.

69 Both parties agreed that the death penalty was not necessary in this case. It was agreed that life imprisonment and 12 strokes of the cane would be the appropriate sentence.

70 The present case could not be said to be as egregious as that in *Azlin (CA)* and even in that case, the death penalty was not imposed. We therefore agreed with the parties' submissions and ordered Salihin to be sentenced to life imprisonment and to receive 12 strokes of the cane. The life imprisonment term was backdated to 3 September 2018, the date of Salihin's arrest.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Senthilkumaran Sabapathy and Lim Yu Hui (Attorney-General's Chambers) for the Prosecution.
Eugene Thuraisingam, Suang Wijaya and Sophia Clare Ng (Eugene Thuraisingam LLP) for Salihin