IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 201

Criminal Case No 43 of 2023

Between

Public Prosecutor

And

Tan Sen Yang

GROUNDS OF DECISION

[Criminal Law — Offences — Murder]
[Criminal Law — Special exceptions — Sudden fight]
[Criminal Law — Special exceptions — Diminished responsibility]

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v
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8 August 2024

Aedit Abdullah J:

1 The accused, Tan Sen Yang (the "Accused"), was charged with the murder of the deceased, Satheesh Noel s/o Gobidass (the "Deceased"), in an altercation that occurred at Orchard Towers, pursuant to s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code").

2 After considering the evidence and the parties' submissions, I was satisfied that the charge had been established beyond a reasonable doubt, and thus convicted the Accused accordingly. The Accused was sentenced to life imprisonment. As the Accused has appealed against his conviction, I set out my reasons in these grounds, which expand on my oral judgment delivered at the hearing on 25 April 2024.

Background

The charge

3 The charge against the Accused read as follows:

> That you, [the Accused], on 2 July 2019 at about 6.25 a.m., at level one of No. 400 Orchard Road, Orchard Towers, Singapore, did commit murder by causing the death of [the Deceased], 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).

4 The punishment prescribed for an offence under s 300(*c*) of the Penal Code was either death or life imprisonment with caning (see s 302(2) of the Penal Code).

Undisputed facts

5 The undisputed facts were set out in an agreed statement of facts[1] that was tendered, duly signed by the Prosecution and the Defence, pursuant to s 267(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC").

First information report

6 On 2 July 2019, at about 6.27am, the Singapore Police Force ("the Police") received a first information report from one Mr Muhammad Fadly bin Sapie ("Mr Fadly"), who was the manager of Naughty Girl Club located at Orchard Towers #02-46, 400 Orchard Road. Mr Fadly reported that "[t]here is a fight here. About 10 to 12. Not sure any weapons. They going to riot here." An audible commotion was also heard. Mr Fadly gave the location as "Level 1, outside" of Orchard Towers.[2]

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1 Agreed Statement of Facts dated 14 August 2023 ("ASOF").

2 ASOF at para 3.

Incident at Naughty Girl Club

7 At around 5:25am that day, the Accused visited Naughty Girl Club at Orchard Towers with a group of acquaintances that included the following persons: (a) Natalie Siow Yu Zhen ("Ms Siow"); (b) Joel Tan Yun Sheng ("Mr Tan"); (c) Ang Da Yuan ("Mr Ang"); (d) Loo Boon Chong ("Mr Loo"); (e) Amanda Yeo Li Min; (f) Tang Ee Moy; (g) Chan Jia Xing ("Mr Chan"); and (h) Tan Hong Sheng.[3]

8 At all material times, the Accused was in possession of a *karambit* knife, which is a type of knife with a curved blade and a finger ring on the end of the knife handle.[4] For a visualisation of how the knife appears when held in the Accused's hand, a picture of the Accused holding the knife is set out at [42] below.

9 At about 6.20am, as the Accused's group was exiting Naughty Girl Club, they had a dispute with another group of about five persons who were entering the club. The two groups shouted secret society slogans at each other.[5] The dispute was subsequently broken up by security officers from Naughty Girl Club, who intervened to separate the two groups. Following this, the Accused's group took the lift down to the ground floor of Orchard Towers.[6]

The fight between the Accused and the Deceased

10 At about 6.25am, the Accused's group emerged from the lift at the ground floor of Orchard Towers and made their way to the exit, with the

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3 ASOF at para 4.

4 ASOF at para 5.

5 ASOF at para 6.

6 ASOF at paras 7 and 9.

Accused leading the group from the front. As the Accused was exiting Orchard Towers, the Deceased, who was an acquaintance of one of the members of the rival group who the Accused's group had just engaged in a spat with, came down to the ground floor alone.[7]

11 The Deceased confronted Mr Ang and asked what the Accused's group wanted. Mr Ang shoved the Deceased, who then retaliated by shoving Mr Ang onto the shutters of a closed shop unit. The Accused and Mr Tan went to Mr Ang's assistance, with the Accused brandishing his *karambit* knife in his right hand.[8]

12 The Accused subsequently punched at the Deceased's face three times while holding onto his *karambit* knife. Although the Deceased then attempted to retreat, Mr Tan, Ms Siow and Mr Ang continued to attack the Deceased by punching and kicking at him as he was retreating. At this time, the Deceased was already bleeding.[9]

13 The Accused's group then hurriedly left Orchard Towers. The Deceased walked a few steps towards the entrance of Orchard Towers, before he collapsed face-first onto the floor.[10]

14 The incident was captured from different angles by various CCTV cameras in Orchard Towers.[11]

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7 ASOF at para 10.

8 ASOF at para 10.

9 ASOF at para 12.

10 ASOF at para 13.

11 ASOF at para 21.

15 The Deceased was subsequently conveyed to Tan Tock Seng Hospital, where he was pronounced dead at 7.25am on 2 July 2019. An autopsy was performed on the Deceased by a forensic pathologist, Dr Paul Chui ("Dr Chui"), who certified the cause of death to be a stab wound to the neck.[12]

The Accused's acts after the fight

16 The Accused and members of his group fled the scene on a taxi to Boon Lay Place Market and Food Village at 221B Boon Lay Place. Subsequently, the Accused went to Mr Loo's residence at Bukit Batok to shower and change his clothes. The Accused left his blood-stained white t-shirt at Mr Loo's residence. Mr Loo later disposed of the Accused's t-shirt.[13]

17 Sometime later on 2 July 2019, the Accused disposed of the *karambit* knife. According to the Accused, he threw the *karambit* knife into the rubbish chute of Mr Loo's residence. The *karambit* knife was never recovered.[14]

18 After leaving Mr Loo's residence, the Accused visited his friend at his friend's shop, who informed him that the Deceased's death had been reported in the media. After the Accused's friend advised the Accused to surrender himself, the Accused did so, and was arrested by the Police at the vicinity of Toa Payoh South Community Club at about 2.35pm on 2 July 2019 (the same day as his fight with the Deceased).[15]

19 In the course of the Police's investigations, the Accused gave the

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12 ASOF at para 14.

13 ASOF at para 15.

14 Defence's Closing Submissions dated 19 January 2024 ("DCS") at para 28; Notes of Evidence ("NE") (11 October 2023) at p 56 ln 28–p 57 ln 3 and at p 58 ln 15–19.

15 ASOF at para 16.

following statements which were admitted into evidence by consent:[16]

(a) a long statement recorded on 2 July 2019 at about 6.17pm under s 22 of the CPC (the "First Long Statement");[17]

(b) a cautioned statement recorded on 3 July 2019 at about 11.05am under s 23 of the CPC (the "First Cautioned Statement");[18]

(c) a long statement recorded on 7 July 2019 at about 4.10pm under s 22 of the CPC (the "Second Long Statement");[19]

(d) a long statement recorded on 8 July 2019 at about 3.10pm under s 22 of the CPC (the "Third Long Statement");[20]

(e) a long statement recorded on 9 July 2019 at about 11.35am under s 22 of the CPC (the "Fourth Long Statement");[21]

(f) a long statement recorded on 13 July 2019 at about 5.10pm under s 22 of the CPC (the "Fifth Long Statement");[22] and

(g) a long statement recorded on 14 July 2019 at about 9.20pm under s 22 of the CPC (the "Sixth Long Statement").[23]

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16 ASOF at para 18.

17 Statement of Tan Sen Yang dated 2 July 2019 at about 6.17pm (AB 118–122).

18 Statement of Tan Sen Yang dated 3 July 2019 at about 11.05am (AB 127–134).

19 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm (AB 172–175).

20 Statement of Tan Sen Yang dated 8 July 2019 at about 3.10pm (AB 176–180).

21 Statement of Tan Sen Yang dated 9 July 2019 at about 11.35am (AB 181).

22 Statement of Tan Sen Yang dated 13 July 2019 at about 5.10pm (AB 182–188).

23 Statement of Tan Sen Yang dated 14 July 2019 at about 9.20pm (AB 189–192).

20 It was undisputed that these statements were given by the Accused voluntarily, and there was no threat, inducement or promise delivered to the Accused before or during the recording of the statements.[24]

The elements of the charge

21 The elements of s 300(*c*) murder are well-established (see, *eg*, the Court of Appeal decision of *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR(R) 582 at [17]):

(a) First, a bodily injury must be objectively established to have been present.

(b) Second, the nature of the injury must be proved.

(c) Third, the accused must have intended to inflict that particular bodily injury (*ie*, it must not have been accidental or unintentional, or that some other kind of injury had been intended).

(d) Fourth, the injury inflicted must have been sufficient in the ordinary course of nature to cause death.

22 Although not explicitly mentioned above, two additional implicit requirements on the *actus reus* are that it must be proved that the bodily injury had in fact been caused by the Accused, and that that bodily injury was the one that had indeed caused the victim's death (see the High Court decision of *Public Prosecutor v Toh Sia Guan* [2020] SGHC 92 ("*Toh Sia Guan*") at [48], citing the Court of Appeal decision of *Chan Lie Sian v Public Prosecutor* [2019] 2 SLR 439 at [79]–[81]).

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[24] ASOF at para 19.

23 In the present case, there was no dispute as to the objective existence of a fatal injury – *viz*, the fatal neck wound – or that such injury was sufficient in the ordinary course of nature to cause death. On the latter point, it was the unchallenged expert evidence of Dr Chui at trial that the Deceased's neck injury was such an injury as it would cause severe blood loss.[25] Instead, the dispute between the parties was confined to the issues of the *actus reus*, *mens rea*, and certain legal defences raised by the Accused.

The parties' cases

24 At this juncture, I summarise the parties' cases in broad strokes for the purpose of fleshing out the issues that were in dispute.

The Prosecution's case

25 First, on the issue of the *actus reus*, the Prosecution submitted that the Accused was the assailant who had inflicted the fatal stab wound on the Deceased's neck. The Accused did not dispute that (a) he had punched the Deceased three times during their altercation; and (b) he had been wielding his *karambit* knife in his hand when he punched the Deceased.[26] These two facts were also corroborated by the CCTV footage of the attack,[27] the Accused's own statements to the Police (where he had made repeated admissions to this effect),[28] as well as the Accused's account of the incident to the psychiatrists.[29]

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25 NE (5 October 2023) at p 11 ln 2–14.

26 Prosecution's Closing Submissions dated 19 January 2024 ("PCS") at para 21.

27 PCS at para 22.

28 PCS at para 23.

29 PCS at paras 24–25.

26 Further, the unchallenged expert evidence of Dr Chui was that the Deceased's fatal wound was caused by a sharp bladed weapon, consistent with the *karambit* knife that the Accused had been armed with.[30] When shown the CCTV footage of the fight between the Accused and the Deceased, Dr Chui confirmed that the other external injuries suffered by the Deceased were consistent with the Accused's punches (while armed with the *karambit* knife), and that any of the Accused's punches could have resulted in the fatal stab wound.[31]

27 Although the Accused alluded to the possibility that he had not inflicted the fatal wound onto the Deceased, the Prosecution argued that his attempt to distance himself from the fatal wound should be disbelieved.[32] First, the Accused's claim that only one of his three punches had made contact with the Deceased was an afterthought. This averment only emerged at trial during the Accused's examination-in-chief, and was, in any event, contradicted by the CCTV footage of the altercation.[33] Second, the Accused's suggestion of the possibility of another member of his group being responsible for inflicting the fatal wound was unsubstantiated speculation. In particular, all of the Accused's companions who had attacked the Deceased had denied being armed during the incident, and the Accused had adduced no evidence to prove otherwise.[34]

28 Second, on the issue of the *mens rea*, the Prosecution submitted that the Accused had intentionally inflicted the fatal stab wound onto the Deceased. The

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30 PCS at para 25.

31 PCS at para 26.

32 PCS at para 27.

33 PCS at para 28.

34 PCS at para 29(a).

Accused had admitted to deliberately arming himself before jumping into the fray; he also admitted to having targeted the Deceased's face.[35] For the purposes of the *mens rea* requirement under s 300(*c*) murder, the Prosecution contended that no fine distinction should be drawn between the Deceased's facial region (which the Accused admitted to targeting), and the Deceased's neck (being the location of the fatal injury), given the close proximity between the two locations.[36] In the circumstances, the court could readily conclude that the Accused had intended to inflict the particular bodily injury that caused the Deceased's death (*viz*, the fatal stab wound in the neck). It was irrelevant to a charge of s 300(*c*) murder that the Accused had not actually intended or contemplated causing the Deceased's death.[37]

29 Third, turning to the issue of the applicability of any of the exceptions to murder under s 300 of the Penal Code, the Prosecution submitted that the Accused could not avail himself of any of these defences:

(a) First, the Accused's alcohol intoxication was the primary operating condition on his mind at the material time,[38] and it was settled that self-induced intoxication did not amount to a defence under s 85 of the Penal Code.[39]

(b) Second, the Accused did not have any qualifying psychiatric conditions amounting to a relevant abnormality of mind for the purposes

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35 PCS at para 32.

36 NE (13 February 2024) at p 39 lns 1–16.

37 PCS at para 33.

38 PCS at paras 42–44.

39 PCS at paras 41 and 45–47.

of the diminished responsibility defence under Exception 7 to s 300 of the Penal Code.[40]

(c) Third, regardless of whether the Accused did have an abnormality of mind within the scope of Exception 7, he did not, in any event, suffer from a substantial impairment of his mental responsibility.[41] The Accused's acts were rationally thought out,[42] he clearly appreciated the nature and quality of his acts,[43] and his response following the altercation indicated that he was aware that what he had done was wrong.[44]

(d) Fourth, the defence of sudden fight under Exception 4 to s 300 of the Penal Code did not apply. Although there was no doubt a fight between the Accused and the Deceased, the Accused was disqualified from relying on Exception 4 as he had taken undue advantage of the Deceased. Specifically, the Accused and his group had heavily outnumbered the Deceased, and the Accused had been armed whereas the Deceased was not.[45]

The Defence's case

30 First, the Defence submitted that there was at least a reasonable doubt that the Accused had inflicted the fatal neck wound suffered by the Deceased.[46]

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40 PCS at paras 49–54.

41 PCS at para 55.

42 PCS at para 57(c).

43 PCS at para 57(a).

44 PCS at para 57(b).

45 NE (13 February 2024) at p 41 ln 6–25.

46 DCS at para 33.

The Defence suggested that the fatal injury could have been inflicted by an assailant – some other member of the Accused's group – who had also assaulted the Deceased. According to the Accused, it was inherently unlikely that his three punches could have caused the number of injuries suffered by the Deceased.[47] The fatal injury was also oddly situated relative to the manner in which the Accused's assault had occurred.[48] Further, there was a possibility that another member of his group – in particular, Mr Chan – had been in possession of a weapon, such that it was they who had inflicted the fatal wound.[49] Finally, the lack of blood at the specific site of the Accused's fight with the Deceased corroborated the fact that the fatal wound had not been caused by the Accused.[50]

31 Second, the Accused submitted that the *mens rea* of the charge had not been made out. The Accused had only intended to inflict an injury to the Deceased's face or head and did not intend to attack the Deceased's neck. It thus could not be said that the Accused intended to inflict the fatal injury on the Deceased's neck.[51]

32 Third, the Accused invoked the two special exceptions to murder under s 300 of the Penal Code, being Exception 4 (sudden fight)[52] and Exception 7 (diminished responsibility).[53]

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47 DCS at paras 37–39 and 63.

48 DCS at paras 40–41.

49 DCS at paras 42–49 and 61–63.

50 DCS at paras 50–60.

51 DCS at paras 69–96.

52 DCS at paras 97–116.

53 DCS at paras 117–162.

The decision

Whether the Accused inflicted the fatal injury suffered by the Deceased

33 Despite the spirited defence put together by the Accused's counsel to cast doubt on the Accused having inflicted the fatal injury onto the Deceased, I was ultimately satisfied beyond a reasonable doubt that the Accused had been the assailant responsible for the infliction of the Deceased's fatal neck wound.

34 As summarised above, the Defence's case on the *actus reus* rested on a confluence of three factors:

(a) First, the Deceased having suffered eight wounds despite the Accused having – as set out in the agreed statement of facts – only struck the Deceased three times.

(b) Second, the possibility that Mr Chan, or some other member of the Accused's group, had been armed when they assaulted the Deceased.

(c) Third, there having been little blood found at the area where the Accused had assaulted the Deceased.

35 In my judgment, these three factors did not assist the Accused as (a) they were either not borne out on the evidence; or (b) insufficiently probative, whether alone or taken together, to manifest a reasonable doubt that the Accused had not inflicted the Deceased's fatal injury.

The Accused inflicted the Deceased's fatal neck wound

36 I did not accept the Accused's suggestion that there was a reasonable doubt that he had inflicted the fatal neck wound onto the Deceased.[54]

37 As a preliminary point, I accepted Dr Chui's evidence that the fatal neck wound could have been caused by a weapon of a similar tooling to the *karambit* knife wielded by the Accused during the fight. As the Accused had disposed of the actual knife used in the assault, Dr Chui's evidence was constrained to be given on the premise of a 3D-printed model (prepared by Dr Chui himself) of a *karambit* knife,[55] which the Accused's counsel confirmed he had no objection to.[56] Although Dr Chui declined to commit to a position on how the knife had specifically connected with the Deceased's person to cause the fatal wound, he did sufficiently confirm that the fatal wound was consistent with having being caused by a *karambit* knife:[57]

> Q A *karambit* knife, if we can summarise, is a short knife with a curved blade and a finger ring on the end of the knife handle. So could you tell us if the fatal wound could be consistent with that caused by a *karambit* knife?
>
> A Yes. I---I---I note---I note that on page 188 [of the AB], you have two versions of the knife. One is a---a cutting blade on the inner side, and the other version is the cutting blade on the other side. I---I didn't know this before, so---but *in either case, this is a curved bladed weapon that can both cause a stab from the point, and then the edge itself can cause the cutting effect. So depends on how it lands on the neck. You start with---you could start with a cut---a stab first, and then it's followed by a cut.*

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54 DCS at para 37.

55 NE (5 October 2023) at p 12 ln 8–24.

56 NE (5 October 2023) at p 13 ln 19–20.

57 NE (5 October 2023) at p 13 ln 27–p 14 ln 4.

[emphasis added]

38 Against this backdrop, the Accused argued that it was inherently improbable that his *three* punches inflicted *eight* wounds onto the Deceased, including the fatal wound.[58] Moreover, the Accused's evidence at trial was that only one of his three punches connected with the Deceased; if that was accepted, it would then be "unimaginable" that a single punch could have caused eight wounds to the Deceased.[59] Finally, further compounding the improbability of the Accused having been responsible was the fact that the fatal neck wound was at the back of the deceased's neck; the Accused, however, had only been seen on the CCTV footage as having attacked the Deceased from the front.[60]

39 In my judgment, none of these points bore the weight that the Accused placed on them.

40 First, I did not accept the Accused's suggestion[61] that only one of his punches had connected with the Deceased.

41 In the first place, the Defence made no attempt at actually proving the Accused's claim that only the first of his three punches had made contact with the Deceased. Instead, the Defence merely postulated that, if the Accused's claim were assumably accepted by the court, that assumption would suggest that the Accused had not inflicted the fatal injury on the Deceased.[62]

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58 DCS at para 38.

59 DCS at para 39.

60 DCS at paras 40–41.

61 NE (11 October 2023) at p 54 ln 8–12; NE (12 October 2023) at p 31 ln 4–5 and p 48 ln 20–21.

62 DCS at para 39.

42 Moreover, I considered that, even if the Accused had genuinely perceived that only "[t]he first punch made contact with the [D]eceased", this was not necessarily so as a matter of factual reality. It is reasonable that the Accused would only have perceived a punch that landed *cleanly* on the Deceased, such that, even if the two other punches had made contact – albeit less squarely – the Accused may not have registered himself as having connected with the Deceased. Indeed, this seemed to be all the more likely because the Accused had punched at the Deceased *with his karambit knife protruding from his closed fist*.[63] Specifically, the Accused described the manner in which he had held his *karambit* knife as follows:[64]

> … I held it in a manner such that the loop of the knife was inside my right index finger, the blade that had the blunt side was resting on my palm and the blade edge was facing outwards, with the curvy tip pointing the same direction. …

This description was consistent with the way in which the Accused had been seen on the CCTV footage at Naughty Girl Club holding his *karambit* knife. A screenshot of this was set out in the agreed statement of facts, and I reproduce it below for reference:[65]

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63 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 10 (AB 175).

64 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 10 (AB 175).

65 ASOF at p 6.

43 In my view, the significance of this was that, even if the Accused's fist (or some part of the Accused's hand) did not actually make contact with the Deceased – such that the Accused did not feel any contact between his hand and the Deceased – it was quite probable that the knife protruding from his fist could have landed on the Deceased's person so as to inflict injury on the Deceased. Put simply, the Accused's perception of having only made contact with the Deceased once, even if true, was not necessarily determinative that his other two punches could not have caused any injury to the Deceased.

44 Second, I did not accept the Accused's submission that it was inherently unlikely that his three blows could have caused the eight wounds (including the fatal wound) suffered by the Deceased. In my judgment, the (comparatively) disproportionate number of wounds suffered by the Deceased relative to the number of punches thrown by the Accused was readily explicable by the circumstances of the fight between the Accused and the Deceased. Specifically, as the Accused and the Deceased were both moving around vigorously, it was entirely possible, and indeed quite probable, that a single punch with the

Accused holding his *karambit* knife could have inflicted more than one wound onto the Deceased.

45 Indeed, this was precisely Dr Chui's evidence. In examination-in-chief, when showed the CCTV footage of the altercation between the Accused and the Deceased, Dr Chui made the pertinent observation that:[66]

> … in the course of that, you have wrist---probably wrist-arm movement of the person delivering the blow. You also have relative movement of the head of the deceased. They are very close to each other, so you could be, in that---sort of that period of---short period of time, *contact the knife twice and cause the injury*.
>
> [emphasis added]

And when his evidence on this point was subsequently tested by the Accused's counsel in cross-examination, Dr Chui maintained his position:[67]

> Your Honour, I've explained earlier that if you are dealing only with a static object, and you deliver one blow or one point, then you expect to find one. However, our situation is dynamic. One, it---it could be the moving head with a stationary weapon, or a weapon that is not entirely stationary, with respect to the head. The---at the first point of contact, the person's head might move and while the knife is still in the general vicinity, you could do this.

46 Put simply, the dynamism of the fight situation, with both parties moving around, meant that one swing of the Accused's arm could have resulted in multiple contact points between the *karambit* knife he was holding and the Deceased's person. As the Accused's own counsel put it, there were two moving parts: a "moving target and a moving weapon".[68] This answered the Accused's

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66 NE (5 October 2023) at p 18 ln 5–12.

67 NE (5 October 2023) at p 28 ln 3–8.

68 NE (5 October 2023) at p 28 ln 9–10.

suggestion that he could not have caused the number of wounds that the Deceased had suffered due to him only having delivered three punches.

47 For the same reason, I was not convinced by the Accused's submission that him having only attacked the Deceased from the front rendered it unlikely that he could have inflicted the fatal stab wound, which was found on the back of the Deceased's neck. Although Dr Chui was understandably cautious and declined to attempt specifying which of the three punches thrown by the Accused had caused the Deceased's fatal neck injury,[69] I considered that his evidence that a single punch could have inflicted multiple wounds on the Deceased sufficiently answered the Accused's suggestion on the inherent unlikelihood of him having caused the fatal neck injury by virtue of its location.

48 In this regard, I also noted that, even though the Accused did strike at the Deceased from the front, the manner in which he had swung his arm when delivering the punch rendered it quite probable that any contact between the *karambit* knife protruding from his fist and the Deceased's body was not necessarily limited to the front of the Deceased's body.

49 At this juncture, I make the observation that the Accused may not have been entirely consistent in his description of the manner of his punch. In his Second Long Statement, the Accused was recorded as having described his punches as "*straight* punches targeting [the Deceased's] face with the knife already in [his] palm" [emphasis added].[70] However, in his Fifth Long

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69 NE (5 October 2023) at p 17 ln 32–p 18 ln 3.

70 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 10 (AB 175).

Statement, when asked "how [he] had intended to slash the [Deceased's] face", the Accused described his punch as akin to a "hook":[71]

> Q21) Can you explain how you had intended to slash the [Deceased's] face?
>
> A21) The only manner I know is to use the protruding blade from the bottom of my closed fist and do a *swinging motion* towards the target. Like *hooking* in boxing.
>
> [emphasis added]

50 A "straight punch" and a "hook" involve different motions. In a "straight punch", as the name suggests, the Accused would essentially have forcefully extended his arm in a *forward* motion; but, in a "hook", the Accused would be swinging his arm from the Deceased's *side* (albeit also in a forward motion).

51 In my view, a "hook" was the more accurate characterisation of the Accused's punches. This was for three reasons. First, this was how the Accused's punches appeared to be from the CCTV footage. Second, leaving aside the CCTV footage, the Accused's own evidence was that he intended to slash the Deceased's face. A "straight punch" is the motion for a stab, whereas a "hook" is more consistent with a slashing action. Indeed, given the manner in which the Accused was holding his knife (see [42] above), a straight punch made little sense for the purposes of slashing the Deceased given that such a punch would have entailed the Accused's fist, rather than the knife, making primary contact with the Deceased. On the other hand, a hooking motion meant that the Accused would likely contact the Deceased's face knife-first. Third, at trial, the Accused in fact challenged the accuracy of the recording of his Second Long Statement, as he contended that he had not used the word "straight", but

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[71] Statement of Tan Sen Yang dated 13 July 2019 at about 5.10pm (AB 184).

merely stated that he had thrown punches.[72] Thus, it was the Accused's own case that he had not thrown "straight punches" which would have more likely limited the Deceased's injuries to the front of his body.

52 Given that the Accused's punches were "hooks" from the side of the Deceased's body, it was not unlikely that the Deceased's injuries were not limited to the front of his body that was facing the Accused. It is worth emphasising, again, that the Deceased and the Accused were both moving vigorously during the fight.

No other members of the Accused's group were armed

53 The second major plank of the Accused's case on denying the *actus reus* was his suggestion that some other member of his group that had assaulted the Deceased was armed with a weapon, such that there was a reasonable doubt as to whether it was him, or them, who had caused the Deceased's fatal injury.

54 The Defence principally focused on Mr Chan, and more specifically, on a screenshot from the CCTV footage, which apparently showed Mr Chan "carrying an object in a clenched fist", in a manner that was suggestive of it having been a weapon.[73]

55 I rejected this suggestion. In my judgment, it was clear that Mr Chan was not carrying a weapon. He might have been carrying something, but this was likely an electronic cigarette. This was evident from the CCTV footage played by the Prosecution during its reply submissions, where Mr Chan was

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72 NE (11 October 2023) at p 38 ln 18–27.

73 DCS at para 42.

seen bringing an object in his right hand to his mouth before visibly exhaling smoke.[74]

56 Furthermore, to the extent that the Defence also relied on Mr Chan's apparent evasiveness on the stand when asked about the object in his hand, I declined to find that Mr Chan was evasive or that this was suggestive that he was aware that he had been carrying a weapon that could potentially incriminate him as the culprit who had inflicted the fatal injury.

57 For context, the Defence relied[75] on the following exchange in its cross-examination of Mr Chan:[76]

> Q Now I show you this footage only because we had one question in mind. What is this object you're holding in your right hand?
>
> A Nothing.
>
> Q Nothing. It appears to be a longish object.
>
> A No.
>
> Q No. Do you recall holding anything in your hands on that day?
>
> A Either cigarette or lighter, that's it.
>
> Q Sorry?
>
> A Either cigarette or something. Lighter, that's it. Because I was coming down, I was smoking.
>
> Q So it would not be any weapon of any sort, right?
>
> A No.
>
> Q Were anyone be able to confirm this?
>
> A I don't know.

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74 NE (13 February 2024) at p 33 ln 21–p 34 ln 11.

75 DCS at para 44.

76 NE (6 October 2023) at p 29 ln 3–16.

The Defence also cited the following exchange between the Prosecution and Mr Chan in re-examination, where it was suggested to Mr Chan that he might have been carrying a "vape" (or at least, that he did partake in the use of e-cigarettes):[77]

> Q Now, Mr Chan, you said you were smoking at the point in time when you were leaving Orchard Towers.
>
> A At the escalator there.
>
> Q Yes, right. Now, do you vape?
>
> A What's vape?
>
> Q I don't know, can you identify that thing? Were you holding a vape at that time?
>
> A I don't really remember what I holding already.
>
> Court: Sure. But do you vape generally, no?
>
> Witness: Again?
>
> Court: Vape, do you vape?
>
> Q Do you vape?
>
> A Yah, I vape.

58 As regards Mr Chan's response in cross-examination, I did not think that he had been evasive. Although he did say he had "nothing" in his hand, I did not perceive this as an attempt at denying reality when he had been shown that he was carrying something. Rather, Mr Chan's response of "nothing" seemed to be intended to convey that he was carrying nothing significant. Moreover, in so far as Mr Chan did not commit as to whether he was carrying a "cigarette" or a "lighter", I did not regard this as particularly material as he did confirm that he recalled himself to have been smoking at the time, which was consistent with him carrying either of these items. This also tied in with the CCTV footage which showed him exhaling smoke after bringing the object in his hand to his

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77 NE (6 October 2023) at p 32 ln 3–14.

mouth (see [55] above). Finally, as to the exchange between the Prosecution and Mr Chan in re-examination, it seemed to me that Mr Chan's response was attributable to him being caught off-guard by the question, or not following what was being asked at that time. I did not agree with the Defence's interpretation that his answer suggested that he did not know what a "vape" or electronic cigarette was.[78] Ultimately, Mr Chan did unequivocally confirm that he did "vape".

59 As for the other members of the Accused's group, the Defence offered nothing but the general speculation that, if the Accused had been able to dispose of his *karambit* knife after leaving Orchard Towers, it was entirely possible that the other members of his group who had been carrying weapons could have similarly done so.[79] I was willing to accept that this might have been so as a matter of theoretical possibility. But weighed against the indisputable fact that the Accused *was* armed, and in the absence of a cogent indication that any other member of his group had also been armed during the fight with the Deceased, I did not think that the mere fact that there was opportunity to dispose of a weapon that may have existed was sufficient to raise a reasonable doubt that such other weapon(s) did in fact exist in the hands of the Accused's associates.

The lack of blood at the scene of the fight between the Accused and the Deceased was equivocal

60 The Defence also pointed to a lack of blood at the scene of the fight between the Accused and the Deceased – which the Defence referred to as the "Stage 1 Fight"[80] – as suggestive of a reasonable doubt that the Accused had not

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78 DCS at para 48.

79 NE (13 February 2024) at p 6 ln 6–14.

80 DCS at para 22(a).

inflicted the fatal wound. This was in contrast to the scene of the "Stage 2 Fight", which involved a subsequent fight between the Deceased and the other members of the Accused's group (but not the Accused himself) after the Accused had punched the Deceased three times.[81]

61 In my view, the lack of blood at the Stage 1 Fight area did not raise a reasonable doubt that the Deceased's fatal injury was not caused during the Stage 1 Fight, as there was a reasonable explanation for the lack of blood in the Stage 1 Fight scene.

62 As Dr Chui explained, although a cut to a major vein would cause "profuse" bleeding, the fact that blood did not flow through a vein with as much pressure as compared to an artery meant that the Deceased's blood loss from the fatal wound would not have been as catastrophic as if an artery had been cut. I set out Dr Chui's cogent and measured evidence on this point in full:[82]

> Q … Now, Dr Paul Chui, are you able to comment on how soon the blood will flow upon receiving all these injuries for each and every wound? Like, perhaps, certain wounds would take a bit of time because certain---
>
> A Okay, in a living person, the moment you cause a wound, stab wound, it will start to bleed. The question is then what were the skin---which were the ones with deep end---
>
> Q How heavy and how fast?
>
> Court Are you able to comment how heavy and how fast?
>
> Witness Well, most of the---except for injury number 8 [(*ie*, the fatal neck injury)], the rest I'll consider so minor---relatively minor injuries. There will be bleeding but there will be generally oozy type of bleeding. Alright, the blood will well. *For number*

81 DCS at para 22(b).

82 NE (5 October 2023) at p 33 ln 22–p 35 ln 14.

8, you are looking at cutting a major vessel and blood will start flowing fairly profusely. And given that this is a major trunking vessel that's coming down from the brain, substantially it will be profuse.

Court Yes.

Q *Profuse, yes. But in terms of speed, would it be within 1 or 2 seconds you can expect a torrential flow of blood?*

A Okay, unlike---okay, *unlike an arterial bleed which is the vessel next door to it, arterial bleed has pressure, it tends to spurt. Whereas you cut a vein, it tends to just flow on---based on the pressure in the vessel that it's coming out. And it will just continue to well out of the wound and start by gravity going onto the shirt or the clothing, onto the floor, depending on where the individual is and how the individual is postured.*

Court Alright, so I think what Mr Teo is trying to ask is that once the cut at number 8 was caused, would you be able to indicate how long it might have taken for the blood to well or come out in a large quantity?

Witness Okay, it will well immediately, coming out of the wound, alright.

Court Yes.

Witness The wound is fairly large wound.

Court Alright.

Witness *The---the person will be able to move around for some minutes.*

Court Yes.

Witness *I mean it's not like, you know, you drop dead immediately but there will be some time, elapsed time for the person to move around because you'll need time for the blood volume to fall, you need time for, you know, the person lose consciousness. We are looking at minutes.*

Court Minutes, alright.

Witness Minutes.

…

Q Sorry, because my question was how soon would the blood flow and how fast and you have gone in---

A Immediately, you cut the blood vessel, it will bleed.

Q Immediately. And it will be profuse, right?

A Yes.

Q So am I right to say within a couple of seconds you will see a lot of blood?

A No, the---if the vessel has been cut.

Q Yes.

A So the moment, you cut it, blood will come out because the blood is under pressure in the vessel. It's not a passive con---I mean, even if it's a container, you put a hole in a water-bottle, it will flow---it will flow.

Court So, Mr Teo is saying once it's cut, it will be flowing out profusely.

Witness Yes.

[emphasis added]

63 To my mind, Dr Chui's account that blood loss from a cut to a vein would "flow" (albeit "profusely"), as opposed to "spurt[ing] out", provided a sufficient explanation as to why there was little blood found at the Stage 1 Fight area. Indeed, Dr Chui's opinion that a person who had suffered a cut to a major vein "[would] be able to move around for some minutes" before losing consciousness was consistent with what had actually happened: the fact that a Stage 2 Fight could have occurred between the Deceased and the other members of the Accused's group, before the Deceased finally collapsed, indicated that his loss of blood had been as described by Dr Chui.

64 Further, I considered that three other factors provided a ready justification for there having been considerably more blood in the Stage 2 Fight scene as compared to the location of the Stage 1 Fight. First, it bears noting that the Stage 1 Fight was comparatively shorter in duration than the Stage 2 Fight.

On the Accused's case, the Stage 1 Fight had lasted for around eight seconds,[83] whereas the Stage 2 Fight had lasted for around 39 seconds.[84] It was thus logical that, all other things kept constant, more blood would be found in the Stage 2 Fight location. Second, as the Stage 2 Fight occurred after the Stage 1 Fight, the effluxion of time meant that the Deceased's blood loss would have compounded in severity, such that it was not unreasonable to expect that more blood would flow by the time of the Stage 2 Fight as compared to just after the injury had been inflicted during the Stage 1 Fight. Third, the Stage 2 Fight was the location at which the Deceased finally collapsed to the ground. As a matter of common sense, blood would then have flowed directly onto the ground at the Stage 2 Fight location.

Conclusion

65 For the reasons above, none of the arguments raised by the Accused to cast doubt on the *actus reus* of the charge held water. I was thus satisfied beyond a reasonable doubt that the Accused had inflicted the Deceased's fatal injury.

Whether the Accused intended to inflict the fatal injury suffered by the Deceased

66 Turning to the *mens rea*, it is settled law that, under s 300(*c*) of the Penal Code, the relevant *mens rea* is an intention to inflict the particular fatal injury suffered by the deceased, in the sense that it was not accidental or unintentional, or that some other kind of injury was intended (see the Court of Appeal decision of *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] 2 SLR 825 at [75], citing the Supreme Court of India decision of *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") at [24]).

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83 DCS at para 22(a).

84 DCS at para 22(a).

67 The Accused vigorously disputed that he had the requisite *mens rea* under s 300(*c*) of the Penal Code. The crux of his case, in summary, was that he had only intended to strike the Deceased's face – or at most, the head region – and not the neck area where the fatal injury was suffered. Thus, it could not be said that the Accused had intended to inflict the fatal neck wound.[85]

68 In this regard, the Accused relied on my earlier decision in *Toh Sia Guan* for the proposition that a practical test for assessing the *mens rea* under s 300(*c*) of the Penal Code was whether the accused had intended to "attack the limb where the injury was found" (at [56]). The Accused argued that the neck and face region were different "limbs" for the purposes of the application of this test.

69 I rejected the Accused's submission. The hair-splitting distinction that the Accused sought to draw between the face and neck was far too fine a line to be workable. As I stated to counsel for the Defence during his reply submissions, it would be very surprising if the law were to distinguish so clearly between parts of the body that are actually adjacent to each other.[86] Any other outcome would, to my mind, leave s 300(*c*) of the Penal Code too easily skirted, as it would open the door to a proliferation of all manner of fine distinctions to be drawn so as to denude the policy underlying s 300(*c*) of the Penal Code. Indeed, as I observed in *Toh Sia Guan*, there are two competing interests at play when a court is tasked to strike the "requisite level of particularity" of intention under s 300(*c*) of the Penal Code. On the one hand, it 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 that he did not intend (at [54]).

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85 DCS at para 69.

86 NE (13 February 2024) at p 18 ln 20–24.

70 Ultimately, what is called for in any given case is a "broad-based, simple and common-sense approach" to the issue of whether the accused person intended to inflict the injury that was in fact found on the deceased (see *Toh Sia Guan* at [54], citing *Virsa Singh* at [21]). In my judgment, common sense and logic pointed in favour of the Deceased's face and neck being treated as forming part of the same "limb", such that an intention to attack the one necessarily encompassed an intention to attack the other.

71 The Accused relied on the High Court decision of *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 ("*Muhammad Salihin (HC)*") as supporting his position.[87] In that case, the accused person had kicked the victim, his stepdaughter, twice in a fit of rage. The victim subsequently passed away, with the cause of death certified as haemoperitoneum due to blunt force trauma to the abdomen. The court found that the accused did not intend to inflict the particular injury suffered by the victim, as he "did not have the intention, at the time when he inflicted the kicks, to strike at the Victim's abdomen" (see *Muhammad Salihin (HC)* at [75]):

> First, the 3.00pm incident had been entirely unpremeditated and it had been triggered by the Victim's act of urinating on the floor which resulted in the accused losing his temper. The accused's first response was to push the Victim, but there was no evidence showing that the accused had done so in order that he could target a specific part of the Victim's body when he later inflicted the kicks. *The accused's kicks eventually landed on the Victim's abdomen because that was the part of the Victim's body that happened to be directly in front of the accused's right foot after the Victim fell down. I therefore found that the accused did not have the intention, at the time when he inflicted the kicks, to strike at the Victim's abdomen.* Second, *the entire sequence of events (starting from when the accused first summoned the Victim to the toilet until the Victim was pushed on the floor and then kicked) happened so quickly that I found that the accused 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*

87 DCS at paras 91–94.

> *intra-abdominal injuries that she came to sustain*, especially since the incident was a result of the accused's spontaneous response after he got angry with the Victim's act of urinating on the floor and then not giving any answers when questioned by the accused.
>
> [emphasis added]

72 This reasoning suggests that, if an accused person swings his arm or leg wildly without forming an intention as to strike a particular part of the victim's body, the *mens rea* for s 300(*c*) murder can never be made out. At the time that I handed down my decision, I had declined to follow this reasoning. I have since been fortified in my view by the Court of Appeal's recent decision to reverse the accused's acquittal of s 300(*c*) murder in *Muhammad Salihin (HC)* in *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] SGCA 22 ("*Muhammad Salihin (CA)*"). In particular, the Court of Appeal observed that, even if an accused person had not actually formed an intention to strike a particular part of the victim's body, this at most amounted to indifference, and did not change the fact that the victim's injury was intentionally inflicted by the accused (see *Muhammad Salihin (CA)* at [63]):

> Even if we accepted 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. … 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.
>
> [emphasis added]

73 As I stated in my oral judgment,[88] I did not think it viable for the Accused to argue that he did not, in fact, intend to land a blow to the neck. The Accused was assaulting the Deceased and was landing blows on him. By his own admission, he intended to attack the Deceased around the head and facial region.[89] From this, given that the head and facial region is of such close proximity to the neck, the court would be slow to infer that the Accused did not form a clear intention to deliberately avoid the Deceased's neck, such that the landing of a blow to the Deceased's neck, and the causing of the fatal injury, could be described as accidental. In my view, the most that could be said was that, similar to the accused in *Muhammad Salihin (CA)*, the Accused swung his knife at the Deceased's facial region (which included the neck) and did not care which specific part of this region his swing would land on; in the premises, he must have intended to slash the Deceased wherever his knife happened to land on.

Whether the Accused could avail himself of any defences

74 Having found that the Accused possessed the requisite *actus reus* and *mens rea*, an offence under s 300(*c*) of the Penal Code was completed. It remained for the Accused to demonstrate that he could nonetheless escape liability, either in whole or in part, by establishing any of the legal defences under the Penal Code.

75 The Accused invoked two defences. First, he relied on the partial defence of sudden fight under Exception 4 to s 300 of the Penal Code. Second, he argued that he could avail himself of the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code.

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88 Oral Judgment at para 17.

89 Statement of Tan Sen Yang dated 13 July 2019 at about 5.10pm (AB 184).

76 It was clear to my mind that neither of these defences were available to the Accused.

Sudden fight

77 To establish the defence of sudden fight, the Accused had to prove that he caused the Deceased's death (a) in a sudden fight in the heat of passion upon a sudden quarrel; (b) without premeditation; and (c) without having taken undue advantage or acted in a cruel or unusual manner (see the Court of Appeal decisions of *Tan Chun Seng v Public Prosecutor* [2003] 2 SLR(R) 506 at [16] and *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 at [57]).

78 I found that the Accused did not establish these requirements.

79 First, there was no sudden quarrel between the Accused and the Deceased. The Accused had already left Orchard Towers, and only returned into the building to confront the Deceased because of a quarrel between the Deceased and Mr Ang. The Deceased had no quarrel with the Accused. Second, following from the first point above, there was no sudden fight between the Accused and the Deceased. The Accused deliberately joined in a fight between the Deceased and Mr Ang after the two had begun shoving each other.

80 Third, and most importantly, the Accused took undue advantage over the Deceased. As the learned authors of Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Singapore* (LexisNexis, 2021) ("*Criminal Law in Singapore*") observe, the requirement that the accused must not have taken undue or unfair advantage over the deceased in their fight "roughly translates into viewing the combatants as being on a more or less equal footing" (at para 29.40).

81 It was clear that the Accused and the Deceased did not engage in their fight on equal terms. The Accused was armed with a knife, whereas the Deceased was unarmed from the outset of their altercation. As the learned authors of *Criminal Law in Singapore* observe, this scenario is one where "it is much more likely that the accused would be regarded as taking undue advantage" (at para 29.44). For example, in the Privy Council decision of *Mohamed Kunjo v Public Prosecutor* [1977–1978] SLR(R) 211 ("*Mohamed Kunjo*"), after a sudden argument and physical altercation involving the exchange of punches had broken out, the accused ran into a storeroom and returned with an exhaust pipe which he used to strike the victim on the head, resulting in the death of the latter. Although the Board was willing to assume that there was a sudden quarrel and a sudden fight between the parties, it opined that the accused faced "formidable difficulties" in proving that he had not taken undue advantage of the victim. This was because the accused "ran to get a weapon and returned to attack the defenceless deceased with a truly murderous weapon" (at [21]).

82 The present case, where the Accused had a weapon from the outset, was arguably an *a fortiori* case as compared to *Mohamed Kunjo* where the accused person acquired the weapon in the midst of the fight. Indeed, the Accused conceded, in both his police statements and his evidence at trial, that he had deliberately armed himself with a knife before confronting the Deceased. He said that he had done so because he feared that the Deceased had also been armed with a knife.[90] Crucially, however, the Accused admitted in cross-examination that he was aware when he confronted the Deceased that the

[90] Statement of Tan Sen Yang dated 2 July 2019 at about 6.17pm at paras 9–10 (AB 120–121); Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 9 (AB 175); NE (12 October 2023) at p 30 ln 10–13.

Deceased was in fact unarmed, and that the ongoing altercation between the Deceased and Mr Ang had been a "fist fight".[91]

83 However, the Accused attempted to excuse his use of his knife in the fight with the Deceased by claiming that he had forgotten that he was armed with his knife when he swung the three punches at the Deceased.[92] This was unconvincing. First, I agreed with the Prosecution that the Accused's failure to even make the most fleeting of allusion to this point prior to trial strongly suggested that this thesis was an afterthought.[93] Second, in any event, it was questionable whether the Accused's own perception of the advantage he possessed – from being armed against an unarmed person – was relevant to the assessment of whether he had taken undue advantage of the Deceased, which would seem to be a question of objective fact.

84 Further, the Accused's advantage over the Deceased did not stop at him bearing a weapon while the Deceased was unarmed. The Accused also had a significant numerical advantage over the Deceased; whereas the Deceased stood alone, the Accused was joined by the various members of his group. It is well-established that a numerical advantage can constitute an undue advantage (see, *eg*, the Court of Appeal decisions of *Chandran and others v Public Prosecutor* [1992] 2 SLR(R) 215 at [17] and *Asogan Ramesh s/o Ramachandren and others v Public Prosecutor* [1997] 3 SLR(R) 201 at [39]).

85 The presence of the two circumstances I have highlighted above meant that the Accused's reliance on the case of *Chan Kin Choi v Public Prosecutor*

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91 NE (12 October 2023) at p 30 ln 14–17.

92 NE (11 October 2023) at p 53 ln 29–32; NE (12 October 2023) at p 30 ln 17–20.

93 PCS at paras 34–35.

[1991] 1 SLR(R) 111 ("*Chan Kin Choi*") for the proposition that the use of a weapon by the accused person did not constitute an undue advantage was,[94] with respect, thoroughly misplaced. In *Chan Kin Choi*, the accused person had brought a knife to meet a group of moneylenders, including the deceased, as he had expected to be outnumbered by the deceased and his group. That prediction turned out to be true, and when a fight broke out between the accused and the deceased's group, the accused killed the deceased by stabbing him in the neck (at [7]).

86 It is self-evident that the facts of *Chan Kin Choi* bore no similarity to the Accused's situation; indeed, the present case was the diametric opposite. Given that it was the Accused who had the numerical advantage, this was not a situation where the Accused had harboured an expectation of being outnumbered and armed himself with his knife in a bid to "even the odds". Moreover, even if the Accused had laboured under a misimpression that the Deceased was armed with a weapon and armed himself with a view to engaging in a knife fight, by his own admission, he later became aware before assaulting the Deceased that this was merely just a "fist fight". In those circumstances, there was plainly no reason for the Accused to use his knife in a fist fight.

87 For these reasons, I was satisfied that there was no arguable case that the Accused could mount that the sudden fight exception under Exception 4 to s 300 of the Penal Code applied to the facts of this case.

Diminished responsibility

88 To establish the partial defence of diminished responsibility, the Accused had to meet the following requirements (see the Court of Appeal

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94 DCS at paras 107–111.

decision of *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 ("*Ahmed Salim*") at [32] and [35]):

> (a) First, that he suffered from an abnormality of mind.
>
> (b) Second, that his abnormality of mind arose from one of the prescribed causes, being: (i) a condition of arrested or retarded development of mind; (ii) any inherent cause; or (iii) a disease or injury.
>
> (c) Third, that his abnormality of mind substantially impaired his mental responsibility for his acts causing the Deceased's death. Typically, this refers to an impairment of (i) his capacity to know the nature of his acts or that they were wrong; or (ii) his power to control his acts, although it has been suggested that these categories are, in principle, not exhaustive.

89 On the last element above, it is apposite to observe, although not relevant to the present case, that there has been a change in the wording of Exception 7, the implications of which are not entirely clear. The version of Exception 7 that the Accused was charged under referred to a substantial impairment of "mental responsibility". This is in contrast to the current version of Exception 7 in the Penal Code 1871 (2020 Rev Ed) which, having come into force on 1 Jan 2020 by virtue of the Criminal Law Reform Act 2019 (Act 15 of 2019), has abandoned the reference to "mental responsibility" in favour of spelling out a requirement of a substantial impairment to: (a) the offender's capacity to know the nature of his acts; (b) the offender's capacity to know whether his acts are wrong; and (c) the offender's power to control his acts. It is not clear if Exception 7, as it currently stands, is confined to these three categories of impairment specifically. In the Penal Code Review Committee, *Report* (August 2018) ("PCRC Report"), the Penal Code Review Committee stated that the

change in the wording of Exception 7 was clarificatory in nature, and not intended to effect any substantive change in the law as it then stood (at p 321). In this regard, earlier *obiter dicta* in Court of Appeal authority had suggested that the concept of "mental responsibility" was not confined to the three types of capacity set out in *R v Byrne* [1960] 2 QB 396 (which roughly track the three categories of impairment set out in the current version of Exception 7) (see *Public Prosecutor v Wang Zhijian and another appeal* [2014] SGCA 58 at [67]; *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 at [25]–[26]; *Ahmed Salim* at [35]). However, no reference to such *dicta* was made in the PCRC Report, and it is not entirely apparent if the wording of the current version of Exception 7 can sustain a non-exhaustive interpretation, as it tends on a plain reading towards an exhaustive interpretation. Furthermore, the Explanatory Statement to the Criminal Law Reform Bill (No 6 of 2019) states that the purpose of the amendment was "to *define* diminished responsibility in terms of an abnormality of mind that substantially impaired [the three types of capacity stated in the provision]" [emphasis added]; the word "define" suggests that the three categories of impairment enumerated in Exception 7 are exhaustive of the scope of the diminished responsibility defence. Nevertheless, as nothing turned on this distinction in the present case – given that the Accused was charged and tried under the former version of Exception 7 that referred to "mental responsibility" – I say no more on this issue, and merely highlight it as a point that might attract treatment by counsel or clarification by the court in a suitable future case.

90 Assuming, *arguendo*, in the Accused's favour that the first and second requirements relating to a recognised abnormality of mind arising from a prescribed cause were met, I was satisfied that the Accused failed to prove on a balance of probabilities that his mental responsibility had been substantially impaired at the time of his assault on the Deceased. It was clear beyond

peradventure that the Accused fully knew what he was doing, was at all times in control of his actions, and appreciated that his acts were wrong.

91 First, the Accused had made a deliberate decision to go back into Orchard Towers despite having just exited it, after he saw Mr Ang embroiled in a quarrel and a scuffle with the Deceased. This indicated that the Accused was sufficiently aware and in control of his mental faculties to form his pleaded intention to assist and protect his friend by confronting the Deceased. Indeed, the Accused even possessed sufficient presence of mind to assess a possibility that the Deceased was armed, and took steps to counter that possibility by brandishing his own knife.

92 Second, it was indisputable that the Accused's conduct following his attack on the Deceased inferred that he was aware that his acts were wrong. This was essentially conceded by the Accused, who consistently stated across his statements and his evidence at trial that he had fled from Orchard Towers after hearing that the Police had arrived:

(a) In his First Cautioned Statement, the Accused stated that "[w]hen someone shouted police, I turned and ran out of the building".[95]

(b) In his Second Long Statement, the Accused stated that he was "pushed out of the building by someone from [his] group", who he heard "say '*Police are here*'", after which the Accused "quickly walked out".[96] Indeed, the Accused also recalled that certain bystanders attempted to

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95 Statement of Tan Sen Yang dated 3 July 2019 at about 11.05am (AB 132).

96 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 10 (AB 175).

stop him from fleeing, albeit he apparently intimidated them into backing off from their pursuit:[97]

> There were a few from my group walking briskly beside me and some other people shouting 'Don't run'. I turned around and saw 2 male Malays about 3 meters away from me. I was somewhere near a bus-stop when I turned and one of them took a green dustbin cover and threw it towards me, hitting my left thigh. I stopped and challenged them to come near me, beaconing [*sic*] my right hand at the same time, they did not but kept shouting at me.

(c) In cross-examination, the Accused agreed that he had fled because he knew that he would be in trouble with the Police:[98]

> A … But because [Tan] Hong Sheng came and told me police is here, and I'm a wanted man, so I left the building.
>
> Q Right. So you can appreciate that your---you are still---your wu---you can appreciate that if the police were to come, you would be in trouble? You can appreciate the fact?
>
> A What do you mean by "appreciate"?
>
> Q I mean---
>
> Court You knew that if the police came, you'd be in trouble, correct?
>
> Witness Yes.
>
> Q Yes.
>
> Court Alright, so basically, Mr Hay is saying you knew at that time you'd be in trouble if the police came. Would that be correct?
>
> Witness Yes, Your Honour.

93 The fact that the Accused could perceive that he "would be in trouble" if the Police were to come to the scene immediately after his assault on the

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97 Statement of Tan Sen Yang dated 7 July 2019 at about 4.10pm at para 11 (AB 175).

98 NE (12 October 2023) at p 19 ln 9–21.

Deceased was significant as (a) it indicated that he appreciated full well what he had done; and (b) also knew that his acts were wrong, as he was liable to be arrested by the Police for it.

94 The Defence submitted that substantial impairment could be inferred from the fact that the Accused had acted in an irrational manner: it was irrational for the Accused to assume that the Deceased had been armed when he decided to return to Orchard Towers;[99] it was irrational for the Accused to rush into a fight without hesitation and regard for self-preservation;[100] and it was irrational for the Accused to perceive any real danger to his friends that required him to protect them, given that his group outnumbered the Deceased.[101]

95 With respect, there was no merit in this submission. The fact that a reasonable person would not have done what the Accused did might mean that the Accused's conduct was foolish, but it did not necessarily mean that the Accused did not appreciate what he was doing, that it was wrong, or that he was not in control of his actions. Each step leading up to and after the Accused's assault on the Deceased entailed a conscious choice on his part – he chose to return to Orchard Towers in order to protect his friend; he chose to arm himself with a knife in expectation that he would be entering into a knife fight; he chose to attack the Deceased's facial and head region specifically; he chose to do so despite his cognisance that the Deceased was unarmed; and he chose to flee from the scene so as to evade arrest from the Police. The Accused was, in his statements and his evidence at trial, able to lucidly detail his thought process during these happenings. To find that, the Accused's lucid chain of thought –

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99 DCS at para 156.

100 DCS at para 157.

101 DCS at para 161.

even if thoroughly foolish – amounted to a substantial impairment of his mental responsibility, would require a significant and unwarranted dilution of the high watermark to establishing Exception 7.

96 For the reasons above, I found that the clarity of mind demonstrated by the Accused put to rest any suggestion that his mental responsibility had been substantially impaired at the time that he assaulted the Deceased.

Conclusion on conviction

97 Given that the *actus reus* and *mens rea* of the offence of murder under s 300(*c*) of the Penal Code had been established, and in light of the Accused's failure to establish any of his pleaded defences to the charge, I was satisfied that the charge against the Accused was made out beyond a reasonable doubt. I thus convicted him on the same.

Sentence

98 Turning to the issue of sentence, under s 302(2) of the Penal Code, having been convicted of s 300(*c*) murder, the Accused was liable to be punished either with (a) death; or (b) life imprisonment with caning.

99 The Prosecution did not press for the death penalty to be imposed.[102] In any event, I was also satisfied that this was not an appropriate case for the imposition of the death penalty.[103] This was not a case where the Accused's conduct outraged the feelings of the community: his assault on the Deceased did not exhibit viciousness or a blatant disregard for human life of the sort in precedent cases which had attracted the discretionary imposition of the death

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102 NE (25 April 2024) at p 10 ln 3–4.

103 NE (25 April 2024) at p 15 ln 3–6.

penalty (see, *eg*, the Court of Appeal decisions of *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 and *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249).

100 In addition to the mandatory sentence of life imprisonment, the Prosecution submitted that a sentence of not less than 15 strokes of the cane was appropriate. It referred me to an unreported decision of the High Court in *Public Prosecutor v Surajsrikan s/o Diwakar Mani Tripathi* (HC/CC 48/2022), in which the accused had randomly slashed an unknown jogger and received a sentence of life imprisonment and 15 strokes of the cane.[104]

101 On the other hand, the Defence submitted that a sentence of at least 12 strokes of the cane would be appropriate, relying on the Court of Appeal decision of *Public Prosecutor v BDB* [2018] 1 SLR 127.[105] In that case, the court held, in the context of the offence of voluntary causing grievous hurt under s 325 of the Penal Code, that a case involving the causing of death warranted a sentence of 12 or more strokes of the cane (at [76]).

102 Although the Prosecution made the fair counterpoint that an offence under s 300(*c*) of the Penal Code was a more serious offence than one under s 325 of the Penal Code, I was satisfied that 12 strokes of the cane was a sufficient sentence in this case. In my view, the mandatory sentence of life imprisonment (which was not available in respect of a charge under s 325 of the Penal Code) adequately reflected the increased severity of s 300(*c*) murder.

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104 NE (25 April 2024) at p 11 ln 23–p 12 ln 12.

105 NE (25 April 2024) at p 13 ln 15–ln 20.

103 The global sentence imposed on the Accused was thus life imprisonment and 12 strokes of the cane, to run from 4 July 2019.[106]

Aedit Abdullah
Judge of the High Court

Hay Hung Chun, Lim Shin Hui and Benedict Teong Kai Yan (Attorney-General's Chambers) for the Public Prosecutor;
Teo Choo Kee (CK Teo & Co), Subir Singh Grewal (Aequitas Law LLP) and Yeo Lai Hock, Nichol (Nine Yards Chambers LLC) for the Accused.

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106 Form 53 issued on 25 April 2024.