IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 44

Criminal Appeal No 25 of 2017

Between

CHAN LIE SIAN

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

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

Chan Lie Sian
v
Public Prosecutor

[2019] SGCA 44

Court of Appeal — Criminal Appeal No 25 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
3 April 2019

30 July 2019 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The present appeal arises out of a brutal attack on Tiah Hung Wai William ("the victim"). On 14 January 2014, the appellant awoke in his lodging house after a night at a casino. He found that a sum of money he had kept in his pockets the night before was missing and suspected that the victim, who worked for him and who he believed was the last to leave the lodging house that night, must have taken it. The appellant called the victim and asked him to come to the lodging house. When the latter arrived, the appellant accused him of stealing his money and proceeded to attack him with his bare hands and later with a metal dumbbell rod which he used to inflict several blows to the victim's head and body. The victim collapsed, bleeding profusely from the head. He was sent to a hospital after some hours, and he passed away there a week later.

2 The appellant was convicted in the High Court of one count of murder under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") and sentenced to death under s 302(1) of the PC. He appeals against both the conviction and the sentence.

Background

3 We begin by setting out the undisputed facts relating to the events of that fateful day.

4 In the early hours of 14 January 2014, the appellant returned to his lodging house after gambling at a casino. He took some sleeping tablets and went to sleep. When he awoke at about 11.00am, he discovered that a sum of around $6000, which he had kept in his pockets when he went to bed, was missing. The appellant's suspicions turned to the victim, who was working for him as a pimp and who, he recalled, had been the last to leave the lodging house the night before. The appellant called the victim and asked him to come to the lodging house.

5 When the victim arrived at the lodging house, he was confronted by the appellant but denied taking the money. This infuriated the appellant, who slapped the victim, and this in turn led to a fight that started in the living room and ended in one of the bedrooms ("Bedroom 1"). At some point during the fight, the appellant took hold of a 40cm-long metal dumbbell rod weighing 1.46kg, with which he hit the victim several times on his head and body. About 15 minutes after the fight had started, the victim was left bleeding on the bed in Bedroom 1.

6 The appellant then called another member of his staff, Chua Thiam Hock ("Chua"), and asked him to come to the lodging house. When he arrived, Chua

was similarly accused of stealing the appellant's money and on denying it, he was attacked with the rod, which fractured his hands. The appellant ordered Chua to go into Bedroom 1 and see for himself what the consequences would be of stealing from him. In Chua's presence, the appellant then hit the victim with the rod again, save that he did not hit his head. Each time he was hit, the victim would groan faintly. The appellant then confined the victim and Chua in Bedroom 1 by securing the door with some rope.

7 The appellant was in the living room when he received a call from Aw Teck Huat ("Aw"); a member of the Sio Gi Ho secret society of which both the appellant and the victim were members. The appellant told Aw that he had beaten up the victim for stealing his money.

8 At about 2.30pm, yet another member of the appellant's staff, Gan Soon Chai ("Gan"), reported for work at the lodging house. The appellant told Gan that he had beaten the victim severely for stealing his money, and showed Gan the rod he had used to attack the victim. The appellant then removed the rope securing the door to Bedroom 1 and opened the door. Upon seeing the victim's condition, Gan called another of the appellant's staff members, Tan Keok Ling ("Tan"), and asked him to come to the lodging house.

9 Tan arrived at the lodging house at about 3.40pm. The appellant showed Tan the rod he had used on the victim, told Tan that he had beaten the victim for stealing his money, and asked Tan to look at him in Bedroom 1. Tan observed that the victim was unresponsive and breathing heavily.

10 The appellant then instructed Chua to fetch a pail of water to clean the blood off the victim's body. Chua, however, was unable to do so because of his fractured hands. The appellant then took a pail of water and splashed it on the

victim, shouting vulgarities and accusing the victim of pretending to be dead.

11 When Tan admonished the appellant for hurting the victim so badly, the appellant was unremorseful and threatened to hit him again when he regained consciousness. Fearing that the appellant would carry out his threat, Tan called Aw hoping that he might prevail upon the appellant not to do so. Tan also told the appellant that an ambulance should be called given the seriousness of the victim's injuries but the appellant refused and threatened to beat up Tan if he were to do so. The appellant also instructed Gan to dispose of the rod.

12 At about 5pm, Koh Tzer Jiiun ("Koh"), another member of the Sio Gi Ho secret society, who had been called by Aw arrived at the lodging house. He checked on the victim and found him unresponsive and breathing heavily. Koh informed Aw of this and also told him that the victim was in a terrible state such that an ambulance should be called. Aw then called his friend Tan Teng Huat ("T H Tan") and asked him to bring the victim to the hospital.

13 When T H Tan arrived at the lodging house, the appellant refused to allow him to bring the victim to the hospital. The appellant told T H Tan that he had beaten the victim for stealing his money, and offered to let T H Tan see him. T H Tan declined and instead called a private ambulance service. When he learnt that a private ambulance was on its way, the appellant instructed Chua and Tan to carry the victim to the front porch of the lodging house to await the private ambulance.

14 When the paramedic in charge of the ambulance saw the victim, she refused to convey him to the hospital because his injuries were too serious. She instead called for a Singapore Civil Defence Force ambulance, which arrived at 6.34pm, followed shortly thereafter by the police at 6.42pm. When questioned

by the police, the appellant claimed that he had found the victim by the roadside and had then called for the ambulance. The appellant also told the police that he brought the victim to his front porch because he was concerned that he might be run over by vehicles had he been left by the roadside.

15 On arrival at the hospital, the victim was found to be in a coma, bleeding from his head, and with skull fractures. He passed away seven days later on 21 January 2014. The cause of his death was recorded as bronchopneumonia following multiple fractures of the skull.

16 In the meantime, the appellant had surrendered himself to the police on 16 January 2014. On the following day, he was charged under s 326 of the PC for voluntarily causing grievous hurt with a dangerous weapon. When the victim passed away, the charge was amended to one under s 302 of the PC for murder.

Key factual disputes

17 We turn to the key facts which were contested on appeal. In the main, the parties disagreed over: (i) the number of blows inflicted by the appellant to the victim's head; and (ii) whether the appellant was aware of the gravity of the victim's injuries and that these were likely to be fatal.

Number of blows inflicted to victim's head

18 It is apposite first to explain the terminology used by the parties and the experts. In the context of this case, the term "impact" is used to refer to an instance of contact with the body. As an illustration, to say that the victim suffered two impacts on his head would be to say that contact was made with the victim's head two times. In contrast, the term "blow" refers to an act of hitting. To say that the appellant inflicted two blows to the victim's head would

mean that the appellant hit the victim's head twice. Finally, it should be borne in mind that the number of injuries that result from an impact or a blow does not necessarily equate to the number of impacts or blows received. For example, it is possible for one impact or blow to result in more than one injury.

19 At trial, the appellant contended that he inflicted only two blows to the victim's head. The Defence submitted that this was consistent with the evidence of Dr Vincent Ng Yew Poh ("Dr Ng"), a consultant at the National Neuroscience Institute who attended to the victim at the hospital.

20 The Prosecution's case, on the other hand, was that the appellant had inflicted at least ten blows to the victim's head. The Prosecution relied on the evidence of Dr Wee Keng Poh ("Dr Wee"), a senior consultant forensic pathologist at the Health Sciences Authority, who performed a post-mortem examination of the victim. He initially testified that there had been ten impacts to the victim's head, and that these were caused by an instrument such as the dumbbell rod. However, he later clarified that one of the ten impacts to the head of the victim was caused by a fall and not by the rod.

21 On appeal, the parties changed their respective positions following the admission of further expert evidence. The Defence adduced reports from Dr Ong Beng Beng ("Dr Ong"), a senior forensic pathologist with the Queensland Health and Scientific Services, whilst the Prosecution adduced reports from Dr Paul Chui ("Dr Chui"), a senior consultant forensic pathologist with the Health Sciences Authority.

22 Both Dr Ong and Dr Chui agreed that Dr Wee had erred somewhat and that the victim had suffered between six and eight impacts on his head. They further agreed that these impacts were of mild to moderate force, save for one,

which led to the skull fractures. This was of moderate to severe force and was sufficient in the ordinary course of nature to cause death.

23 The only point of divergence between Dr Ong's and Dr Chui's opinions was whether all the impacts should be attributed to the appellant.

24 Dr Ong thought that two of the impacts – specifically, the two impacts which Dr Ong and Dr Chui agreed led to the three injuries labelled as C3, C4, and C7 – could have been caused by the victim hitting his head on "intervening objects". By this, he meant objects other than the rod used by the appellant, for instance, if the victim had fallen and hit his head on the floor. This was because the injuries from these two impacts were located at the side and back of the victim's head, where it was possible he might have hit it against some other object as he was falling.

25 Dr Chui, however, thought that injuries C4 and C7 were consistent with the rod having been used as they were linear in appearance. He also thought that injury C3 could have been caused by the rod, although he did not explain this conclusion. Dr Chui further contended that if injury C7 had been caused by an intervening object, there would have been an underlying skull fracture, which there was not. Dr Chui thus disagreed with Dr Ong's opinion that the two impacts which led to injuries C3, C4, and C7 could have been caused by intervening objects.

26 In sum, the Prosecution contended that the appellant inflicted between six and eight blows to the victim's head, while the Defence submitted that he had inflicted between four and six blows. The Defence arrived at the figure of between four and six blows by subtracting the two impacts which it contended

were caused by intervening objects from the total of between six and eight impacts which the victim had suffered to his head.

Appellant's knowledge of the gravity of the victim's injuries

27 The other key point of contention between the parties relates to the appellant's knowledge of the gravity of the injuries that had been suffered by the victim, such knowledge being at the time of, and immediately after, the attack. For reasons which we will explain in greater detail later, our conclusion on this point has a bearing on the sentence to be imposed on the appellant.

28 The Defence submitted that at the time of the attack, the appellant did not realise that the injuries were likely to be fatal. In support of this, the Defence pointed to the following:

(a) The appellant testified that he voluntarily surrendered to the police knowing that the victim was badly injured but not that he would die.

(b) The victim was conscious even after the attack and did not pass away until seven days later.

(c) The external appearance of the victim's injuries did not alert the appellant to their fatal nature.

(d) Had the appellant realised that the victim's injuries were fatal, he would not have: (i) openly informed several parties that he had beaten the victim; (ii) claimed that the victim was pretending to be dead; or (iii) splashed water on the victim to "wake him up".

29 The Prosecution, on the other hand, submitted that the appellant was well aware of the fatal nature of the injuries, and it relied on the following points in particular:

(a) The appellant accepted under cross-examination that hitting someone on the head with the rod could kill that person.

(b) The victim was objectively very badly hurt, as evidenced by there being "blood everywhere".

(c) The appellant surrendered because the evidence against him was overwhelming.

The parties' cases at trial

30 We turn to the parties' cases at trial, beginning with the Prosecution's case.

The Prosecution's case

31 According to the Prosecution, the appellant became incensed when the victim refused to admit that he stole the money and he then formed the intention on the spur of the moment to kill the victim. To establish that specific intention, the Prosecution relied on the fact that, despite knowing he was bigger and stronger, the appellant took hold of a dangerous weapon to give himself a clear advantage over the victim. He exerted considerable force with the rod, and targeted a vulnerable part of the victim's body, namely his head. The Prosecution submitted that the appellant's intention to kill could also be inferred from the one-sided and relentless nature of the attack, as reflected by the relatively minor injuries sustained by the appellant, and the fact that the

appellant continued to attack the victim even when he was bleeding, in a weakened state, and had his back to the appellant.

32 The Prosecution further submitted that the appellant's conduct subsequent to the attack was consistent with this specific intention. First, the appellant had tried to hit *Chua* on the head with the rod, suggesting that he must earlier have also targeted the *victim's* head. Second, the appellant continued to beat the victim even when he was unconscious, telling Chua that he would break the victim's arms and legs if he was not dead. The appellant even warned Chua against interfering, saying that it would make no difference if he killed two persons instead of one. Third, the appellant was not at all remorseful about his actions, but instead made an example of the victim to his other staff, warning them that this would be the consequence if they stole from him. Finally, the appellant attempted to evade detection by cleaning the scene, intimidating witnesses against alerting the authorities, and lying to the police about how he came across the victim or where the rod could be found. The Prosecution argued that the appellant's attempts to distance himself from the victim suggested that he understood the fatal nature of the victim's injuries.

33 The Prosecution also submitted that the appellant was not a credible witness because he had lied to the police as to how he came across the victim's body. There were also material inconsistencies in his evidence pertaining to the quantity of sleeping tablets he had consumed and when he consumed them, where the attack began, and whether the blows to the victim's head and to Chua's hands were intentional.

34 As for the partial defence of sudden fight, the Prosecution submitted that aside from the appellant's own testimony, which should be disbelieved on account of his lack of credibility, there was no evidence of any fight. Rather, it

was an attack in which the appellant exercised an undue advantage over the victim and acted cruelly, in that despite his overwhelming physical advantage, he struck the victim on the head with a metal rod at least ten times, causing bleeding lacerations and extensive skull fractures.

The Defence

35 The Defence primarily was that the appellant never intended to kill the victim. Instead, he only wanted to teach the victim, whom he regarded as a "younger brother", a lesson for stealing from him. The Defence submitted that the lack of any intention to kill was supported by the fact that throughout the attack, he had used only moderate force. Moreover, he never acted to end the victim's life over the course of the entire day when he had ample opportunity to do so. Further, it was submitted that he did not specifically target the victim's head, as evidenced by injuries to various other parts of his body. Indeed, the Defence contended that the blows to the victim's head were accidental. The appellant had intended to hit the victim's arms and legs but, because of the latter's sudden movements, the appellant ended up hitting the victim's head on two occasions. We digress to note that this particular line of argument was not pursued at the appeal.

36 The Defence too relied on the post-attack conduct of the appellant but submitted that this pointed *away* from his having an intention to kill. The appellant had tried to revive the victim by pouring water on him, and he later surrendered himself to the police not knowing that the victim would later die.

37 The Defence further submitted that the appellant's testimony was credible and that the inconsistencies in his evidence were attributable to difficulties with recollection and were not deliberate lies. The Defence also contended that Chua's evidence as to what the appellant had said when hitting

the victim should not be relied upon because that evidence was inconsistent and changed during trial. In his statement to the police, Chua had alleged that the appellant said that he would hit the victim "until he is dead" and if he did not die, the appellant would "break his hands and legs". However, at trial, Chua changed his evidence and alleged that the appellant said that "even [if the victim is] not dead, [the appellant] would break his hands and legs".

38 The Defence also submitted that there was a break in the chain of causation and that the supervening cause of death was bronchopneumonia. This too was not pursued at the appeal. The Defence also sought to rely on the exception of sudden fight, contending that there was no premeditation and the fight had broken out in the heat of passion over the missing money.

39 The Defence therefore submitted that the appellant should be convicted for voluntarily causing grievous hurt by a dangerous weapon under s 326 of the PC, instead of murder under s 300(*a*) of the PC.

Decision below

40 The learned High Court judge ("the Judge") who presided over the trial convicted the appellant of one count of murder under s 300(*a*) of the PC and sentenced him to death under s 302(1) of the PC as she was bound to do in the circumstances: see *Public Prosecutor v Chan Lie Sian* [2017] SGHC 205 ("GD").

41 In relation to the key disputed facts set out above (see [17]–[29(c)]), the Judge found that the appellant inflicted at least nine blows to the victim's head. She made no specific finding on the appellant's knowledge as to the gravity of the injuries he had inflicted. On the number of blows to the victim's head, the Judge essentially preferred the evidence of Dr Wee over the evidence of Dr Ng.

She also accepted Dr Wee's evidence that one of the head injuries could have been caused by either the rod or a fall, and thus held that Prosecution failed to prove beyond a reasonable doubt that that specific injury was caused by the appellant: GD at [47]–[50].

42 The Judge held that the appellant caused the victim's death. She found that the victim would have succumbed to the head injuries inflicted by the appellant even if he did not contract bronchopneumonia, and that bronchopneumonia was, in any case, a foreseeable consequence of the victim's injuries: GD at [54]–[56].

43 The Judge also found (GD at [57]) that the appellant had intended to cause the victim's death because:

(a) It was extremely difficult to believe that the appellant accidentally hit the victim's head nine times.

(b) The attack was vicious. The appellant used a metal rod to inflict nine blows to the victim's head, which is a vulnerable part of the body. This caused blood to splatter onto the ceiling, walls and bed, and resulted in the victim suffering severe skull fractures and extensive head and brain injuries. The cruel nature of the attack strongly indicated that the appellant intended to cause the victim's death.

(c) The attack was one-sided. The victim was considerably smaller than the appellant, who agreed that he had overpowered the victim. The victim was also unarmed throughout the attack, whilst the appellant was armed with a lethal weapon. As a result, the victim suffered extensive and severe injuries while the appellant only had some minor injuries.

(d) Despite the one-sided nature of the attack, the appellant persisted in attacking the victim. When the victim was already bleeding from his head and weakened from the fight in the living room, the appellant pursued him into Bedroom 1 and continued to attack him there. He later beat the victim some more in Chua's presence, when he was lying on the bed groaning and covered in blood. It was telling that the appellant admitted in cross-examination that he was determined to beat the victim until he confessed to stealing the appellant's money, and did not intend to stop even if he killed the victim.

(e) The appellant admitted that he knew that hitting a person on the head with the rod could kill. The necessary conclusion was thus that the appellant intended to cause the victim's death when he deliberately attacked him on the head with the rod.

(f) The appellant's conduct after the attack also reflected the intention to kill. He continued to beat him in Chua's presence, remarking that even "if [the victim] did not die, he [would] break [the victim's] hands and legs" and that it made no difference to him whether he killed one or two persons.

44 The Judge found that the appellant could not rely on the partial defence of sudden fight as it was clear that the appellant had taken undue advantage of the victim and had acted in a cruel and unusual manner: GD at [61].

45 Finally, the Judge observed (GD at [62]–[65]) that the appellant was not a credible witness because:

(a) His assertion of the blows to the victim's head being accidental was incredible and contradicted by the objective evidence.

(b) Over the course of the investigations, the appellant had lied to the police.

(c) Throughout the course of the investigations and in court, the appellant sought to downplay the extent of his attack. Although he initially admitted to hitting the victim's head in a statement to the police, he later explained that this had been accidental in a further statement. Likewise, in court, the appellant claimed that the victim was not in as critical a condition after the attack as the other witnesses made him out to be.

(d) The appellant's evidence on various aspects was contradicted by the accounts of other witnesses, especially Chua. The Judge found that Chua was a reliable eyewitness and his account of the facts was generally supported by the other witnesses and the medical and scientific evidence.

The parties' cases on appeal

The case for the Defence

46 On appeal, the Defence argued that the Judge erred in finding that the appellant intended to kill the victim. The arguments advanced in support of the appeal were essentially reiterations of the arguments that had been advanced at trial and we do not repeat them here, save to highlight a few points.

47 First, the Defence submitted that the appellant's evidence at trial had to be viewed in its proper context. In relation to his assertion that he knew hitting a person on the head with the rod could kill, the Defence contended that the appellant might not have properly understood the question. In any case, knowing that hitting someone on the head with a dumbbell rod could kill that

person does not inevitably lead to the conclusion that because he had hit the victim with such a rod, the appellant must have intended to kill him.

48 Second, it was submitted that if the partial defence of sudden fight was not established, and if the appellant were convicted of murder, then this should be under s 300(*c*) and the appellant should be sentenced to life imprisonment and not death, as he did not exhibit, in his conduct at the material times, a blatant disregard for human life.

The Prosecution's case

49 The Prosecution, on the other hand, submitted that the Judge correctly concluded that: (i) the appellant was not a credible witness; (ii) the appellant intended to kill the victim; and (iii) the partial defence of sudden fight was not applicable. In the alternative to its primary case, the Prosecution maintained that if the conviction for murder under s 300(*a*) were set aside, the appellant should instead be convicted of murder under s 300(*c*).

50 In that event, the Prosecution submitted that he should nonetheless be sentenced to death because he had exhibited a blatant disregard for human life.

Issues to be determined

51 The following issues thus arise for consideration:

(a) Should the appellant's conviction under s 300(*a*) stand?

(b) If the appellant's conviction under s 300(*a*) is reversed, should the appellant be convicted under s 300(*c*)?

(c) If the appellant is convicted under s 300(*c*), what is the sentence that we should impose?

Factual disputes

52 We begin by addressing the factual issues raised in the appeal.

Number of blows inflicted to victim's head

53 To recapitulate, the dispute between the parties relates to whether two of the impacts to the victim's head – specifically, the two impacts which led to the three injuries labelled as C3, C4, and C7 – were caused by intervening objects. In all it appears there were between six and eight impacts (see [22]). The experts were not able to ascertain the precise number of impacts because it was possible, as we have noted at [18] above, for a single impact to cause more than one injury. For the reasons that follow, in our judgment, only four of the impacts to the victim's head may properly be attributed to the appellant as blows that he delivered for the following reasons.

54 First, we note that the Prosecution's own witness, Dr Wee, agreed that injury C3 could have been caused by a fall (see [20]).

55 Second, Dr Chui did state that injuries C4 and C7 were *consistent with* having been inflicted using the rod because they were linear in appearance. However, injuries C4 and C7 could equally have been caused by intervening objects that were similar in shape to the rod, such as the edge of the glass table in the living room or the edge of the cabinet in Bedroom 1. We note that the attack continued in both the living room and Bedroom 1 and according to the appellant, the victim had fallen down in both locations. As for injury C3, no reason was given by Dr Chui for his conclusion that injury C3 could have been caused by the rod. Furthermore, Dr Chui's testimony does not exclude the possibility that injury C3 could instead have been caused by one or more intervening objects.

56 We also reject Dr Chui's opinion that injury C7 could not have been caused by an intervening object because it was not accompanied by an underlying skull fracture. As Dr Chui himself noted, there were injuries to the victim's head that were caused by the use of the rod but which were not accompanied by underlying skull fractures. In these circumstances, we can see no reason why, *unlike* an impact caused by the use of the rod, an impact with an intervening object would necessarily have been accompanied by a skull fracture, and nothing has been advanced in the evidence to explain this.

57 The Prosecution relied on a part of Dr Chui's evidence where he said that, given the curvature of the skull, it would be highly unlikely that an impact by the rod on one side of the head should result in an injury on the diametrically opposite side of the head. The paragraph from Dr Chui's report that was relied on by the Prosecution reads:

> Given that the object is a linear rigid metal rod, impacting the skull, upon its curved surface, one can logically reason that:
>
> > a) the location of the injury points to the side of the head that was facing the oncoming rod at the time of impact. In the absence of a good explanation, it is highly unlikely that an impact on one side of the head should result in a laceration on the diametrically opposite side of the head.
> >
> > b) [t]he linearity of the wound points to the axis of orientation of the rod at the point of impact.

58 In our judgment, this should be considered in the context of what Dr Ong was saying and to which this was a response. Dr Ong contended that the force from an impact to, for example, the left side of the victim's head could result in his hitting the right side of his head against an intervening object, thus causing an injury on that side of his head. Dr Chui's evidence was that, *without more*, an impact to one part of the head would not result in a laceration on the

opposite side of the head. But this says nothing about the possibility of such an injury arising from hitting some other object.

59 Third, the appellant consistently testified at trial that the victim fell multiple times. We reproduce a few extracts from the appellant's testimony:

> Question: All right. So now let's move on to [Bedroom] 1. You were telling us then you were---the fight then went to [Bedroom] 1. Tell us what happened in [Bedroom] 1.
>
> Answer: He wanted to snatch the dumbbell away from me. I did not know that his forehead was---was bleeding. Then we were fighting with---against each other.
>
> Question: Yes.
>
> Answer: When---when we in the room, I push him and he laid---and *he fell onto the bed*.
>
> Question: Yes.
>
> Answer: When we were at---at the room door, we were-we were fighting with---against each other. And we were at the small cabinet in the room, *both of us then fell and I did not know why he was bleeding*.
>
> …
>
> Question: You had stopped beating him at what point?
>
> Answer: Well, he was trying to snatch the dumbbell bar away from me. So, both of us were in a struggle and *both of us fell onto the floor*. Both of us didn't want to release the dumbbell bar, because otherwise he would beat me to death.
>
> [emphasis added]

Although the appellant did not explicitly state that the victim hit his head when he fell, this is not surprising since the appellant could well have been too engrossed in the attack to notice such a detail.

60 For these reasons, we think there is nothing to distinguish the cogency of the parties' respective cases as to whether two of the impacts could have been

caused by intervening objects. As we stated in *Tan Chor Jin v PP* [2008] 4 SLR(R) 306 at [34] and later affirmed in *Eu Lim Hoklai v Public Prosecutor* [2011] 3 SLR 167 at [64], the scenario which favours the accused person should be preferred in cases where multiple inferences may be drawn from the same set of facts. We thus accord the appellant the benefit of doubt and do not attribute to him two of the impacts to the victim's head (the two impacts which led to the injuries labelled C3, C4, and C7). This leaves us with between four and six impacts for which the appellant might be held responsible. However, it remains the case that the benefit of any reasonable doubt should be given to the appellant. Since on the evidence, it is not possible to resolve the uncertainty as to whether the remaining injuries were caused by four or more impacts to the head of the victim, we proceed on the basis that is most favourable to the appellant and conclude that there were four such impacts that were attributable to the appellant as blows that he inflicted.

Appellant's knowledge of the gravity of the victim's injuries

61 We turn to consider whether the appellant was aware that the victim's injuries were likely to be fatal. On the evidence, we are satisfied that while the appellant knew that the victim was badly injured, he was unaware that the injuries were likely to be fatal.

62 The appellant consistently testified that he did not know that the injuries were so severe as to be likely to cause the victim's death. The Prosecution did not challenge the appellant on this part of his testimony, as reflected in the excerpts reproduced below:

> Question: Do you have an explanation as to how [the victim's] head came to be hit at least nine times?
>
> Answer: I'm not sure about this because at that point in time we were snatching the---the dumbbell rod

away from each---the other. We were pushing each other as we were hot. And I actually accidentally hit his head only twice. *If I had knew that I hit him so severely, I wouldn't have surrendered myself.* I actually saw that he was accident---accidentally hit on the left temporal region. As regards to the injuries on his---on the top of his head, I'm not so sure about this.

Question: All right. You say that you were pushing each other and you accidentally hit his head twice. In the course of your struggle with [the victim], was there any situation wherein the dumbbell rod hit his head other than these two situations that you have testified to?

…

Question: When you called [Chua] over the phone, would you agree that you told him that [the victim] had fallen?

Answer: Yes.

Question: Yes? Why did you tell [Chua] that [the victim] had fallen?

Answer: [The victim] is my brother and when we fight we seldom---we would s---we seldom make a police report. We didn't want [Chua] know about this and we would settle this ourselves.

Question: I don't understand. You called [Chua], you told him to come because [the victim] had fallen, right?

Answer: Yes.

Question: So why did you do this?

Answer: Because we're just---we're brothers and we just had a fight. That's all.

Question: I see. But did you tell---you didn't tell [Chua] that you had fought with [the victim]?

Answer: *I didn't know that the matter---the matter could ended up so seriously.*

Question: All right. But when you called [Chua], why didn't you tell him that you had fought with [the victim]?

…

> Question: So do you agree or disagree that you told [Chua] to go and look at [the victim]?
>
> Answer: Yes, I ask him to go inside and take a look at [the victim].
>
> Question: Right. And when you told him to go and look at [the victim], would you agree that you knew at that time that [the victim] was in bad shape, with blood all over the walls and bed and his face and arms?
>
> Answer: Yes. *At that time, I did not know that he was so severely injured.*
>
> Question: Would you agree that you were not at that point remorseful about beating up [the victim]?
>
> …
>
> Question: Okay. When [Gan] or Or Di arrived, would you agree that you had no hesitation telling him that you had beaten up [the victim] badly with a metal dumbbell rod?
>
> Answer: I said that I hit him but *I did not know that I hit him so severely.* I did say this.
>
> Question: All right. When Pong Pong or [Tan] arrived, you also had no hesitation telling him that you had hit [the victim] with a metal dumbbell rod and invited him to go and see for himself. Agree?
>
> [emphasis added]

63 It is evident that the Prosecution never directly challenged the appellant's evidence that he was unaware that the victim's injuries were likely to be fatal. The closest the Prosecution came to challenging the appellant's evidence was when the appellant admitted that hitting someone on the head with a dumbbell rod could kill:

> Question: All right. So do you agree with me that even in this statement you did not say anything to suggest that you did this accidentally, that you had hit [the victim's] forehead accidentally.
>
> Answer: Yes.

> Question: Now I put it to you that you never hit [the victim] accidentally on the head at any time.
>
> Answer: I disagree. *If I were to hit his head, I would have killed him.* I only hit his arm; that is all. And this is a fact because he did lower his head. I did not tell the [investigating officer] that I---that I had hit his head. I actually told the [investigating officer] that I hit his head---his---his arm and that I did not know that I hit his head. And this is true and I can swear by this.
>
> Question: Now, just now you said that if you were to hit his head, you would have killed him, and that's why you said it was accidental. Okay, my question is: *Would you agree with me that hitting [the victim]'s head with a dumbbell rod would kill him?*
>
> Answer: *Yes, I agree.*
>
> [emphasis added]

64 As to this, we have two observations. First, while much was made of this testimony, with respect, it seems to us to have been largely irrelevant because while it is self-evident that hitting someone on the head with a dumbbell rod *could* kill that person, that simply does not mean very much without considering such other critical details as the force of the blow, where exactly it was delivered, precisely what the parties were doing at the time the blow was delivered, and how heavy the rod was. While each of these aspects were discretely dealt with in the evidence, the question that was put to the appellant was largely meaningless without being framed with reference to the underlying premises. Second, and in keeping with what we have just said, the question posed by the Prosecution did not sufficiently challenge the appellant's evidence that he was unaware of the fatal nature of the victim's injuries at the time of and in the immediate aftermath of the attack. It was not at all clear that the Prosecution's question was addressing the specific question of whether *the appellant* was *in fact* aware, *at the time of and in the immediate aftermath of the actual attack*, that the victim's injuries were likely to be fatal. The Prosecution's

question was instead phrased as a hypothetical, directed at the appellant's state of knowledge at the time of the trial, as to the potentially fatal nature of such attacks without specific reference to the other premises we have referred to.

65 As we have held in a line of authorities including *Teoh Kah Lin v Public Prosecutor* [1994] 3 SLR(R) 859 at [20], *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [81] and *AOF v Public Prosecutor* [2012] 3 SLR 34 at [221], failure on the part of the cross-examining party to challenge a witness's testimony may commonly be taken to be acceptance of it. Having failed to challenge the appellant's testimony that he was unaware of the fatal nature of the victim's injury, we are satisfied that the Prosecution must be taken not to have controverted this part of the appellant's evidence.

66 Further, in our judgment, when regard is had to the totality of the appellant's conduct, it is simply not possible to conclude that he was aware of the fatal nature of the victim's injuries at the time of the attack and in its immediate aftermath. After the attack, the appellant: (i) became upset at the victim for feigning death; and (ii) said that he would attack the victim again when he regained consciousness. The appellant further surrendered himself to the police precisely because he thought that the victim's injuries were not fatal, and expected that he would be and was in fact initially charged with an offence under s 326 of the PC. The appellant's evidence on his reason for surrendering was likewise not challenged by the Prosecution.

Conviction under s 300(*a*)

67 We turn to outline the law on s 300(*a*) of the PC. It is well established that for an accused person to be convicted under s 300(*a*) of the PC, he must have done the act by which death is caused, with *the specific intention to cause death*. As we held in *Iskandar bin Rahmat v Public Prosecutor and other*

matters [2017] 1 SLR 505 ("*Iskandar*") at [34], such an intention to cause death need not be premeditated, and can instead be formed on the spur of the moment. But it must be a specific intention to cause the death of that person.

68 It seems to us that the highest the Prosecution's case could fairly be put was that an inference could be drawn that the appellant intended to cause the victim's death if regard were had only to the immediate circumstances of the attack. After all, the appellant delivered at least four blows to the victim's head, a vulnerable part of his body, using a metal rod weighing 1.46kg. Of these, at least one was delivered with moderate to severe force, causing extensive fractures in the *thickest* part of the skull bone. That injury was sufficient in itself, in the ordinary course of nature, to cause the death of the victim.

69 Further, we do not accept that the blows to the head were accidental. Although the appellant mentioned that he had hit the victim's head in his statements to the police dated 22 and 24 January 2014, it was only in his statement dated 27 January 2014 (which was his fourth statement) that the appellant claimed that the blows were accidental. If those blows had indeed been accidental, one would have expected the appellant to have said this at the earliest opportunity. The fact that he did not, suggests that this assertion was an afterthought. Further, the appellant's version of events that he accidentally hit the victim on the head *twice* does not cohere with the medical evidence that there were no less than *four blows* to the victim's head. Lastly, we find it incredible that in a short span of 15 minutes, the appellant could have been so unfortunate as to *accidentally* hit the victim's head at least four times. In our judgment, counsel for the appellant was right at the hearing of the appeal, to have abandoned the position that the blows to the victim's head were all accidental.

70 However, it would be wrong to analyse the evidence having regard only to the events that culminated in the initial attack. In *Public Prosecutor v Oh Laye Koh* [1994] 2 SLR(R) 120 at [24], we observed that whether the accused person intended to cause death is something to be inferred from the *totality* of the surrounding circumstances. In our judgment, the totality of the circumstances, including the appellant's conduct after the attack, negates such an inference being drawn. In undertaking this analysis, it is helpful to first recount our finding at [66] above that the appellant did not, at the material time, appreciate the fatal nature of the victim's injuries. In that light, his conduct subsequent to the attack is simply incompatible with his having harboured a specific intention to kill the victim, for the following reasons.

71 First, if the appellant had intended to kill the victim, it would have been entirely incongruous for him to omit to see to it that the victim was killed. He plainly had ample opportunity to do so because the appellant and the victim were alone in the lodging house throughout the initial attack. With no witnesses around and with the victim lying helpless on the bed, the appellant had every opportunity to bring any such intention to kill to fruition. Yet, he did not do so even though the victim was clearly alive. When we put this to the Prosecution, we were told that he could have subsequently had a change of heart. But this was *never* the case advanced by the Prosecution. Nor is there any reason at all for thinking that there was any reason for the appellant to have had any *change* in his intentions on that fateful day.

72 The appellant also eschewed all subsequent opportunities to ensure the victim's death. Shortly after Chua arrived at the lodging house, the appellant attacked the victim afresh. However, he only targeted the victim's limbs and not any vulnerable body parts. To add to this, the impacts were only of mild to moderate force when the appellant would have been expected to exert more

force had he in fact wished to kill the victim. We note Chua's evidence that the appellant made statements to the effect that: (i) even if the victim did not die, the appellant would break his hands and legs; and (ii) it made no difference whether he killed one or two persons. In our judgment, these utterances were equally consistent with a manifestation of bravado designed to intimidate Chua. Indeed, his express statements to Chua that this was the fate that would befall those who stole from him supports this. Simply put, despite the ample opportunities that were plainly available to him, he did not *act* to end the victim's life at a time when he was plainly still alive.

73 Further, if the appellant had *intended* to kill the victim, various aspects of his conduct are simply inexplicable. It would have been entirely against his interest for him to have openly admitted to what had transpired to so many others, as he did to Chua, Aw, Gan, Tan, Koh, and T H Tan. We note that T H Tan was barely even an acquaintance of the appellant. Indeed, the appellant had asked Chua and Tan to come to the lodging house, thus giving rise to the existence of witnesses where there had been none. The appellant even showed Gan and Tan the weapon he had used. In our judgment, the appellant's lack of furtiveness points away from his having harboured a specific intention to kill the victim, and incidentally also strengthens our conclusion that the appellant did not appreciate the fatal nature of the victim's injuries at the material time (see [66]).

74 We recognise that the appellant did take some initial steps to conceal his involvement in the victim's injuries. He instructed Gan to dispose of the rod and lied to the police about how he came across the victim. But, in our judgment, these attempts to conceal are equally consistent with his having had a settled intention to *severely injure* rather than specifically to kill the victim.

75 Finally, if the appellant had attacked the victim intending to kill him, it would have made no sense for him to have later: (i) tried to revive him by pouring a pail of water on him; (ii) accused him of feigning death; or (iii) said that he would attack him again when he regained consciousness. In our judgment, the appellant's conduct when considered in its totality, suggests that he did *not* specifically intend to kill the victim.

76 The Prosecution contended that the appellant's conduct subsequent to the attack could have been contrived in order to conceal his earlier actions which had been undertaken with the intention to kill the victim. We have no hesitation in rejecting this hypothesis, which in our respectful view, is far-fetched. It would have taken extraordinary presence of mind for the appellant, immediately after attacking the victim intending to kill him, to then have called the witnesses to the lodging house and acted as he did in order to fashion them into witnesses capable of corroborating a lesser intention on the part of the appellant, all while the victim was still alive!

77 For these reasons, we find that the Judge erred in convicting the appellant under s 300(*a*) of the PC and we set aside that conviction.

Conviction under s 300(*c*)

78 We turn then to consider whether the appellant should be convicted under s 300(*c*) of the PC.

79 The ingredients of murder under s 300(*c*) of the PC are well established. They are that: (i) death has been *caused* to a person by an act of the accused person; (ii) the act resulting in bodily injury was done with the *intention* of causing that bodily injury to the victim; and (iii) the bodily injury intended to

be inflicted is *sufficient* in the ordinary course of nature to cause death: *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 at [32].

80 We are satisfied that all three ingredients under s 300(*c*) of the PC are made out beyond a reasonable doubt. Counsel for the appellant did not seriously challenge this at the appeal.

81 First, it is no longer disputed that the appellant *caused* the victim's death. Second, the appellant *intended* to cause the relevant bodily injury to the victim. As we explained earlier (at [69]), we wholly reject any suggestion that the blows to the victim's head were accidental and this, in any case, was not pursued at the appeal by the appellant. Finally, the forensic pathologists were unanimous in concluding that the victim's skull fractures were *sufficient* in the ordinary course of nature to cause death. Crucially, the victim's skull fractures were associated with the injuries labelled C1 and C2, and not the injuries labelled C3, C4, or C7. What this means is that the skull fractures were not caused by intervening objects (see [60]), but by the appellant.

82 Exception 4 to s 300 of the PC provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. The three elements of the partial defence of sudden fight are: (i) a sudden fight in the heat of passion upon a sudden quarrel; (ii) an absence of premeditation; and (iii) an absence of undue advantage or cruel or unusual acts: *Iskandar* at [57]. As we held in *Tan Chun Seng v Public Prosecutor* [2003] 2 SLR(R) 506 at [21(c)], the courts have placed substantial emphasis on the disparity in size or strength as between the victim and accused person in determining whether undue advantage was taken.

83 We are satisfied that the appellant cannot avail himself of the partial defence of sudden fight. The appellant held an undue advantage over the victim given that he was armed with a lethal weapon and further enjoyed a considerable physical advantage by virtue of his physique. The appellant stood at 174cm, weighed 77kg, and engaged in weight-lifting training. In comparison, the victim stood at 166cm and weighed 50kg, earning him the nickname "William Kia", which is Hokkien for "William child" or "little William". As the appellant admitted, the victim did not have much of a chance of defending himself against the appellant. Moreover, the appellant attacked the victim relentlessly, continuing even when the victim was weakened and had been overpowered, as he admitted at trial. We therefore substitute the appellant's conviction under s 300(*a*) of the PC with a conviction under s 300(*c*) of the PC.

Sentence for conviction under s 300(*c*)

84 Section 302(2) of the PC affords the courts a discretion to sentence an accused person convicted under s 300(*c*) of the PC to either life imprisonment and caning, or death. We have held in a line of authorities beginning with *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 at [44]–[45] ("*Kho Jabing*"), that the death penalty is warranted where the actions of the offender outrage the feelings of the community, and this would be the case where these actions exhibit viciousness or a blatant disregard for human life (see also *Micheal Anak Garing v Public Prosecutor and another appeal* [2017] 1 SLR 748 ("*Micheal Garing*") at [47] and *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*") at [110]).

85 In *Kho Jabing* at [45] and *Chia Kee Chen* at [110], we observed that it is the manner in which the offender acted which takes centre stage. Relevant

considerations include the number of stabs or blows inflicted, the area of injury, the duration of the attack, the force used, the mental state of the offender, and the offender's actual role or participation in the attack.

86 In this case, we are not satisfied that the manner in which the appellant acted evinces that blatant disregard for human life. The Prosecution argued that the appellant had exhibited such disregard in:

(a) preventing others from obtaining medical attention for the victim and shifting his focus to evading detection when medical attention could no longer be avoided;

(b) wanting the victim to suffer as much as possible by using the rod even though he was much smaller, weaker and, unlike the appellant, was unarmed; and

(c) parading the victim's bloodied and bruised body before his staff, to show the consequences of offending the appellant.

87 In our judgment, none of the arguments advanced by the Prosecution establish that the appellant was acting at the material time with a blatant disregard for human life.

88 First, we have found at [61]–[66] that the appellant was not aware at the time of the attack or in its immediate aftermath, of the fatal nature of the victim's injuries. Although we agree with the Prosecution that the victim was objectively in need of medical attention and that his condition would, in the ordinary course of nature, cause death, this is irrelevant to the question of whether *the appellant* acted with a blatant disregard for human life. An examination of *the appellant's* regard for human life must necessarily be informed by *the appellant's*

knowledge and state of mind at the relevant time. If the appellant honestly believed that the victim's injuries were not fatal, the fact that the victim's injuries were *objectively* fatal would not, in itself, be sufficient to demonstrate that *the appellant* acted in blatant disregard for human life in preventing the witnesses from obtaining medical attention for the victim and parading the victim's body to show the consequences of offending the appellant. The most that can be said about the appellant's conduct is that his actions exhibit a blatant disregard for the victim's *welfare*, which does not carry with it the necessary sanction of the death penalty.

89 Second, we reject the Prosecution's submission that the appellant wanted the victim to suffer as much as possible. There is no evidence of such an intention. The Prosecution relied on the fact that the appellant armed himself with the rod even though the victim was smaller, weaker, and unarmed. While this denies the appellant recourse to the partial defence of sudden fight, we cannot see how it proves an intention to inflict as much *suffering* as possible. The circumstances in the present case differ greatly from those in *Chia Kee Chen*, where one of the reasons we found the accused person to have exhibited a blatant disregard for human life was his desire for the victim there to suffer as much as possible before dying. Our finding in *Chia Kee Chen* was based on the accused person's many police statements to that effect. Among other things, he had said (*Chia Kee Chen* at [65]) that he:

> … wanted to torture [the victim] by tying him on a tree for as long as he can survive. I want him to suffer so much. I am not happy that he died so easily and fast. I don't want him to die so easily and I want him to suffer for what he had done to my wife …

90 This expressed intention was also consistent with the viciousness of the attack, which resulted in the fracture of almost every bone in the victim's skull from the bottom of his eye socket to his lower jaw: *Chia Kee Chen* at [1] and

[141]. In the present case, the appellant cannot be said to have harboured a comparable desire to inflict such suffering. Had he done so, the principal attack would not have lasted only 15 minutes and the blows to the victim's head would not have almost entirely resulted in impacts of only mild to moderate force.

91 Finally, it is apposite to contrast the present case with *Kho Jabing*. The accused person in *Kho Jabing* set out to commit robbery together with his co-accused person. The accused person approached the victim from behind and struck him on the head with a piece of wood, causing him to fall to the ground. When the victim turned around to face upwards, the accused person struck him on the head once more. The accused person then proceeded to hit the victim's head at least two more times even though he was not reacting at all. The majority in *Kho Jabing* sentenced the respondent to the death penalty, finding that the accused person exhibited a blatant disregard for human life by inflicting completely unnecessary additional blows to the victim's head: *Kho Jabing* at [71]–[72].

92 Here, the evidence of the experts is that the victim would have been incapacitated by the blow which caused the skull fractures. However, unlike *Kho Jabing*, it is not possible to determine whether the appellant inflicted additional blows to the victim's head gratuitously after that, because the experts were unable to determine the sequence of these blows. It is therefore not possible to make a finding on whether the incapacitating blow was delivered *before* the other blows to the victim's head, in which case the other blows would have been gratuitous, or *after*, in which case the same could not be said. Furthermore, it is significant that after the principal attack, which lasted about 15 minutes, all the blows that were inflicted by the appellant were not directed at the victim's head. The somewhat indiscriminate manner in which the attack was effected, with many blows to the body as well, further seems to us to

demonstrate that the appellant believed on the whole that the blows he inflicted were not fatal, and that he was essentially intent on wanting to teach the victim a "lesson" (albeit in a wholly perverse and misguided manner). This is also consistent with our analysis of the facts set out at [71]–[75] above.

93 The settled jurisprudence of this court requires that the Prosecution establish the additional element we have set out at [84] above, before the court will impose the death penalty. In undertaking this inquiry, the court should examine the evidence closely and determine the precise findings it has made and it should not be distracted by the gruesomeness of the scene of the crime. Having reviewed the evidence, we are not satisfied that the Prosecution has established that additional element. We therefore allow the appeal and set aside the death penalty and impose a sentence of life imprisonment instead.

Conclusion

94 For the foregoing reasons, we substitute the appellant's conviction under s 300(*a*) of the PC with a conviction under s 300(*c*) of the PC and sentence him to life imprisonment. The appellant is spared from caning as he is above the age of 50.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Wendell Wong, Benedict Eoon and Alexis Loo (Drew & Napier LLC) and Loo Khee Sheng (K S Loo & Co) for the appellant;
April Phang and Sarah Shi (Attorney-General's Chambers) for the respondent.
