Eu Lim Hoklai *v* Public Prosecutor
[2011] SGCA 16

Case Number	: Criminal Appeal No 14 of 2009 (Criminal Case No 1 of 2008)
Decision Date	: 12 April 2011
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Subhas Anandan and Sunil Sudheesan (KhattarWong) for the appellant; Winston Cheng Howe Ming, Charlene Tay and Lau Kah Hee (Attorney-General's Chambers) for the respondent.
Parties	: Eu Lim Hoklai — Public Prosecutor

Criminal Law

Criminal Procedure and Sentencing

Evidence – Weight of Evidence

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2009] SGHC 151.]

12 April 2011 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 This is an appeal brought by Eu Lim Hoklai ("the accused") against the decision of the trial judge ("the Judge") in *Public Prosecutor v Eu Lim Hoklai* [2009] SGHC 151 ("the Judgment") that held him guilty of the murder of one Yu Hongjin ("the deceased") on Sunday, 18 June 2006. The accused was found to have caused the deceased's death by strangling her, thus committing an offence under s 300(*c*) of the Penal Code (Cap 224, 1985 Rev Ed) ("Penal Code"). The Judge rejected all the defences the accused had raised and, upon convicting him, imposed the mandatory death sentence.

Background

The accused

2 At the time of the alleged offence, the accused was 52 years of age and had been married for 28 years. For 22 years, he and his wife operated a food stall selling cooked seafood in Tampines. They earned profits of between $3,000 and $4,000 a month from this business. From this, they paid themselves a monthly combined salary of $2,200. The accused has three daughters – the youngest is a 17-year-old polytechnic student. The accused's own formal schooling went no further than a Primary 3 education. He is unable to read English and his preferred spoken language is Hokkien; he is, however, able to communicate in basic Mandarin.

3 Every morning, before that fateful day on 18 June 2006, the accused would buy seafood for his business from the market at Blk 409 Ang Mo Kio – only a few blocks away from the massage parlour at Blk 416, Ang Mo Kio Avenue 10, #01-985, known as Feng Ye Beauty and Healthcare Centre ("Feng

Ye") where the incident took place.

The deceased

4 Little is known of the deceased's background. She was, at the time of her death, 29 years of age and a national of the People's Republic of China ("China"). It is not known when she first came to Singapore or what status she held whilst residing here. Her son was studying in Singapore at the time of her death. The accused describes her as a "Pei Du Ma Ma" (a Mandarin term) or "study mama" – a reference to mothers (usually from China) who accompany their children to Singapore in order for the latter to receive primary and secondary-level education. [note: 2] After her death, her 10-year-old son returned with the deceased's sister to China. [note: 3] It also appears that while the deceased was ostensibly "accompanying" her son in Singapore, the two did not, in fact, live together. According to the accused, the boy resided with another individual who also provided tuition for a monthly fee of $800.

5 The deceased, who worked as a masseuse, appears to have lived alone in her flat at Ang Mo Kio. [note: 4] In March 2005, she began work at a massage parlour in Serangoon near Ang Mo Kio Avenue 3 known as "Man Tian Ti" ("Man Tian Ti"). Subsequently, she ceased to work at Man Tian Ti and on 8 March 2006, she – together with an individual called Toh Ah Fong ("Toh") – registered the Feng Ye massage business (referred to at [3] above) in Toh's name. Thereafter, she appears to have run the business as her own.

6 Aside from these few scraps of information, no other evidence has been adduced by the Prosecution about the deceased – about her life in Singapore, her family, friends, relationships and *most crucially* her state of mind at the time of her death. Unfortunately, there does not appear to have been any attempt made to locate and interview those who might have been close to her; nor to identify those individuals who might have interacted with her in the days leading up to her untimely end. All that this Court (and the Judge below) has before it is the accused's account of his relationship with her and his account of her actions and state of mind. This is not an altogether satisfactory state of affairs.

Relationship between the accused and the deceased

7 The accused's account of his relationship with the deceased is as follows: the two first met in March 2005, when the deceased was working at Man Tian Ti. The accused regularly had his hair cut at a barber's just a few shops away from Man Tian Ti and, one day – by chance – he happened to be walking by Man Tian Ti when the deceased approached him and offered to give him a massage. He returned regularly thereafter as he enjoyed her services.

8 By June 2005, their relationship had become intimate. They frequented hotels in Geylang where they had sex. The accused claims that he supported the deceased financially over the course of their relationship. He would give her money when she asked; he paid for her flight back to China to visit her family and even acted as a guarantor for her stay in Singapore. [note: 5] When she left her job at Man Tian Ti in order to set up Feng Ye, the accused provided her with over $8,000 to set up the business. In his statement to the police dated 23 June 2006, the accused said that he considered her his mistress, though he subsequently acknowledged under cross-examination that he was not entirely certain of the implications of the word "mistress". [note: 6] He did state that he had managed, over the course of the year or so that they were together, to have successfully concealed the nature of their relationship from his family. However, a few days before the deceased's death, he told his second and third daughters that the deceased was his partner in the massage parlour business and

owed him money. He also showed them the location of Feng Ye and the rented flat where the deceased lived, though he did not give them details of his personal relationship with the deceased.

9 According to the accused, he would visit the deceased two to three times a month when she was working at Man Tian Ti in Serangoon. When she moved to operate Feng Ye in Ang Mo Kio, the visits became more frequent: he would visit the shop two to three mornings a week to help her open and clean the place before proceeding to his stall at Tampines.

10 Their close relationship soured irretrievably after 14 June 2006. The accused became convinced that the deceased had spent the night of 13 June 2006 with another man and, believing that the deceased had cheated on him, he confronted her at her home the next day and they had a heated quarrel: the accused wanted to end their relationship while the deceased refused to do so and became angry. According to the accused, she "slapped [him] and punched [his] head" [note: 7] in the course of their argument and threatened to cause trouble with his family if he ended their relationship without substantial monetary compensation. They met and quarrelled several times in the following days and these frequent quarrels had a marked effect on the accused's mood. A psychiatric assessment carried out by Dr Kenneth Koh following the offence concluded the accused had, as a result of these quarrels with the deceased, begun to experience symptoms associated with depression of moderate severity: his mood was disturbed, he had difficulty sleeping, suffered from diminished concentration and loss of appetite and had many ruminative thoughts about his unhappy and difficult state. [note: 8]

11 Finally, whether over the phone or in person, the accused could not be sure, the deceased asked the accused to meet her at the massage parlour on the morning of 18 June 2006 in order to "settle [their] matter once and for all". [note: 9] He agreed to do so.

The facts

12 18 June 2006 was a Sunday; it was also Father's Day. That morning, the accused's daughters went marketing on their father's behalf so that he might have the opportunity to sleep in and rest. [note: 10] They also planned to take him out for a dim sum lunch. However, some hours before the planned family outing, the accused left home on the pretext of going to exchange some of the fish his daughters had bought that morning; instead, he went to the massage parlour to meet the deceased.

13 At 10.56am, the accused's second daughter received a telephone call from her father asking her to go to Feng Ye quickly as he was in danger. She recalled the name of the massage parlour from the conversation she had with her father (see [8] above) and she proceeded immediately to the parlour's location at Ang Mo Kio Avenue 10. Upon reaching the place, she could not find a way into the premises. The front door was locked. When she asked the proprietess of the neighbouring hair salon if there was a connecting door between the two premises she was told that there was none. She then contacted the police at 11.14am and was subsequently joined by several police officers, her mother and sister.

14 The accused's wife was the first to gain entry to the massage parlour through its back door. She found the accused and deceased in the third of three massage cubicles: the deceased was lying on her back on top of the massage table with a knife in her hand; the accused was found lying (similarly face up) on the carpeted floor next to the massage table on which the deceased was found. When the paramedics arrived at the scene, they examined the deceased and pronounced her dead at 11.41am. The accused was in a semi-conscious state and only hazily aware of his surroundings. He was taken immediately to hospital, where he was found to have sustained nine stab wounds to his

abdomen. Four of these had penetrated the abdominal cavity; however, none of his internal organs were injured. He underwent an operation to close his wounds and recovered fully thereafter.

The expert evidence

Dr Wee Keng Poh

15 The autopsy report [note: 11] (AZ20061667) was prepared by Dr Wee Keng Poh ("Dr Wee"), a consultant Forensic Pathologist with the Health Sciences Authority ("HSA"). Dr Wee arrived at the massage parlour at 2.35pm on 18 June 2006 and carried out the autopsy on the deceased the next day on 19 June 2006. He noted the position of the body and the presence of blood spots and smudges on the deceased. He then examined the body at the scene and estimated the time of death to have been six to 12 hours before the time of examination. Dr Wee noted in his report that the timing was consistent with the history of a fight at about 9.00am–10.00am that morning. [note: 12]

16 The autopsy revealed marked swelling of the face above the deceased's neck, petechial haemorrhages of the skin, sclera haemorrhages in the eyes, scratch marks and superficial bruises on the surface of the neck, as well as internal haemorrhaging and an underlying fracture of the right hyoid bone in the neck. Dr Wee's examination also revealed two fatal stab wounds to the deceased's chest – one of which penetrated the right lobe of the liver and the other of which penetrated both the right lobe of the liver and the posterior right kidney. Death was certified as having been caused by "**ACUTE HAEMORRHAGE *due to* STAB WOUNDS OF ABDOMEN *and* ASPHYXIA *due to* MANUAL STRANGULATION**". [note: 13] [emphasis in bold and in bold italics in original] Dr Wee also added in his report that the deceased had died "as a result of two different modes of injuries – that of being stabbed in the abdomen and strangulated (compression of the neck) by the assailant's hands." [note: 14] At the trial, he confirmed that either the stab wounds or the manual strangulation would – on its own – have sufficed in the ordinary course of nature to cause death. [note: 15]

17 Dr Wee also made several other points during his oral testimony in the court below. He postulated that the act of strangulation had preceded the stab wounds to the deceased's stomach – citing the marked changes around the deceased's face and neck, the relative lack of defensive wounds (except for a superficial cut on her right middle finger) and the minimal amount of blood spilled from her abdominal wounds. [note: 16] He testified that death would have occurred after three to five minutes of strangulation [note: 17] and concluded that a "great [amount of] force" had been used in strangling the deceased, as evidenced by the haemorrhages in her eyes, congestion of her face and fracture of her right hyoid bone. [note: 18] His report had also noted the pooling of about 400cc of blood in the deceased's peritoneal cavity (located in the abdomen) with minimal spillage from the wound openings. [note: 19] When asked about this during his examination-in-chief, Dr Wee opined that it showed that the deceased had been alive, [note: 20] lying on her back, [note: 21] and not moving much [note: 22] when she was stabbed. He also said that it was unlikely – looking at the wounds' natures, course, and depth of penetration – that the deceased's injuries were self-inflicted. [note: 23]

18 During his cross-examination, Dr Wee was also taken through the evidence of Dr Paul Chui ("Dr Chui") (see [19] below) and the Crime Scene Reconstruction Report of Ms Lim Chin Chin ("Ms Lim") (see [22] below). He was asked his opinion of several of Ms Lim's conclusions – in particular, those relating to whether there had been a struggle and whether the accused's wounds could have been self-inflicted. These questions did not fall directly within his area of expertise or the scope of the investigations he carried out in the instant case; nevertheless, Dr Wee stated that he

shared both of his fellow experts' opinions – namely, that there was likely little or no violent struggle from the deceased when she was stabbed [note: 24] in view of, *inter alia*, the accused's lack of defensive wounds [note: 25] (see [24] below) and that the position and nature of the accused's wounds did not preclude self-infliction as a cause of his injuries [note: 26] (see [21] below).

Dr Chui

19 A separate report (HSA/CFM/2006/FZ0009) [note: 27] was prepared by Dr Chui, who visually examined the accused's injuries on 19 June 2006 [note: 28] following the latter's operation at Tan Tock Seng Hospital. He had also read the notes of the operation performed on the accused. His report recorded, *inter alia*:

(a) two small scratches on the accused's right cheek;

(b) two short scratches on the accused's left thumb; and

(c) nine abdominal wounds consistent with stab wounds resulting from a knife blade penetration – four of which had penetrated the abdominal cavity but not damaged any major organs.

20 Dr Chui concluded that had the wounds been caused by a knife, the blade "probably did not go beyond a depth of 5cm to 6cm into the body", [note: 29] and that the position and nature of the wounds did not preclude self-infliction as a cause of the injuries. He noted the lack of defensive injuries on the parts of the forearms that had been exposed during his visual examination *but admitted at the trial that he had not examined the accused's body in its entirety because he did not want to "disturb him a great deal" as the accused had just been operated on at the time of examination*. [note: 30] He had *only* examined carefully the accused's exposed abdominal area and exposed forearm up to the mid-upper arm [note: 31] for injuries and acknowledged, under cross-examination, that the two short scratches on the accused's left thumb could possibly have been defensive injuries suffered in the course of a struggle.

21 During his oral testimony, Dr Chui also clarified what he meant by his conclusion that the knife blade "probably did not go beyond a depth of 5cm to 6cm into the [accused's] body". He explained that the statement was "not exhaustive." [note: 32] He also accepted that it was "possible" [note: 33] for the knife to have penetrated to a depth beyond 6cm since the precise depth of penetration could only be ascertained if the knife struck an organ within the abdominal cavity. [note: 34] He did maintain that it would have been very unlikely for a knife to penetrate the stomach beyond a depth of 5cm to 6cm without hitting a major organ. [note: 35] He even characterised such a possibility as "exceptional" [note: 36] and extremely "lucky". [note: 37] However, he acknowledged that this characterisation shed no light on the manner in which the accused was injured. Dr Wee also testified that the fact that the four stab wounds penetrating the peritoneal cavity had avoided injuring any of the major organs might be regarded as exceptional or lucky, but it did not mean that it was more likely that the wounds had been self-inflicted rather than not. [note: 38]

Ms Lim

22 The Prosecution's third forensic expert was Ms Lim – a Senior Forensic Scientist with the HSA and an expert on bloodstain pattern analysis [note: 39] and crime scene examination and

reconstruction. [note: 40] Ms Lim holds a Bachelor and Masters of Science (with Honours) in Chemistry; she also holds a Masters in Business Administration – her educational qualifications, however, do not include qualifications in either medicine or forensic pathology. [note: 41] She submitted three laboratory reports made under s 369 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) at the trial below: CR-2006-00142 describing the scene of the crime; [note: 42] CR-2006-00156, detailing the results of the laboratory analysis of various exhibits; [note: 43] and CR-2007-00004, providing a reconstruction of the crime. [note: 44] The last of these was the most significant as it took into account the conclusions from the preceding two laboratory reports as well as the expert reports provided by Dr Wee and Dr Chui (which had been considered in the preceding paragraphs).

23 The main findings in Ms Lim's report were:

(a) that there was no vertical blood flow pattern towards the feet of the deceased from the two stab wounds in her abdomen either on her body or on the front of the camisole that she wore;

(b) that there were no secondary transfers from the bloodstains on her camisole to her blouse, suggesting that the position of the blouse (pushed, as it was, higher than the camisole) had not changed much, nor come into much contact with the blood from her wounds or on the camisole;

(c) that there was a lack of wounds on both the deceased's and the accused's forearms that could have been attributed to a violent struggle between the two whilst the accused was holding the knife;

(d) that the deceased's clothing was undamaged (with no cuts to their surface) and not in disarray (the bow on the deceased's blouse was neatly tied and the buttons intact and buttoned);

(e) that there were no blood flow patterns from the deceased's stab wounds except that which flowed sideways across her abdomen to her right side and downwards to the massage table;

(f) that there was no significant amount of the deceased's blood to be found on the other areas of the massage table or around the massage parlour cubicle;

(g) that there was a lack of defence wounds on the accused's forearms;

(h) that no blood from the deceased was to be found on the accused's clothing as a result of transfer during a violent struggle;

(i) that the deceased's left hand was relatively free from bloodstains, suggesting that it had not come into contact with the accused's blood; and

(j) that there was no impact spatter on the deceased's clothing that would be expected from her stabbing him multiple times.

She had already noted in her earlier report (CR-2006-00142) that the knife in the deceased's hand was held in an unusual fashion: "her thumb was not curled around the handle in the opposite direction as the four flexed fingers; instead, her thumb and fingers were on the same side of the handle." [note:

45]

24 The conclusions that Ms Lim drew from her findings above, were that:

(a) the accused had strangled the deceased with his hands and that there had been little or no violent struggle from the deceased while this strangulation was taking place;

(b) the deceased was unlikely to have been holding the knife when she was being strangled;

(c) it was unlikely that the deceased suffered the stabs to her abdomen while she was standing upright; and

(d) following the stabbing, the deceased did not move significantly from her final position on the massage table.

Conclusion (c), in particular, tied in with Dr Wee's observation that a partially dried trail of mucus or froth from the deceased's mouth indicated that the deceased was strangled whilst in a vertical position [note: 46] and conclusion (d) is consistent again with Dr Wee's observation that the pooling of 400cc of blood in the deceased's abdominal cavity (without any major spillage out through the wounds in the abdomen) indicated that she did not move much after the stabbing. [note: 47]

Dr Johan Duflou

25 The Defence's forensic expert was Dr Johan Duflou ("Dr Duflou") – a specialist forensic pathologist who, amongst his various professional appointments, holds the posts of Chief Forensic Pathologist of the Department of Forensic Medicine, Sydney South West Area Health Service, Australia and Co-joint Associate Professor in the School of Medical Sciences and the National Drug & Alcohol Research Centre of the University of New South Wales. Dr Duflou was provided with the following material for the purpose of making his report (Report No J071659) [note: 48] : the reports of his fellow experts – namely, those of Dr Wee, Dr Chui and Ms Lim – and a total of 108 photographs of the deceased, accused, and scene of the alleged crime. He was also provided with a report of Dr Alfred Kow Wei Chieh's psychiatric examination of the accused, [note: 49] which set out some of the accused's and deceased's background history and the former's brief account of the events of 18 June 2006. He was not, however, provided with the accused's police statements – a fact noted and ultimately relied on by the Judge in his decision not to place much weight on Dr Duflou's views (see [33] below).

26 The conclusions in his report were as follows: he agreed with Dr Wee's conclusion that the cause of death was due to acute haemorrhage due to stab wounds in the abdomen and asphyxia due to manual strangulation; [note: 50] he also agreed with Dr Chui's statement that the wounds on the accused were consistent with having been caused by the knife found in the deceased's hand. However, Dr Duflou did not agree with Dr Chui's conclusion that the blade of the knife probably did not enter the accused's body beyond a depth of 5cm to 6cm. [note: 51] He took the contrary view in that it was entirely possible and reasonable for the blade of the knife to have entered beyond the abdominal wall and asserted that it would not have been inconceivable for the entire length of the knife blade (all 18cm of it) to have entered the abdomen without striking a major organ [note: 52] as the bowel would have been capable of sliding out of the blade's way. [note: 53] Dr Duflou also stated that while the accused's own abdominal wounds might have been self-inflicted, the only indication that they could be such was their location on an easily accessible location on the accused's body;

otherwise, *many features typical of self-inflicted wounds (such as the tight grouping of wounds, hesitation marks, undamaged clothing and the resemblance of the wounds to incisions rather than stabs) were simply not present in the instant case*. [note: 54] He thought it was impossible to state, on the basis of an examination of the stab wounds alone, if any of the wounds were self-inflicted or not and concluded that it was "**an entirely reasonable possibility, and ... *a preferred likelihood that the abdominal stab wounds [were] <u>not</u> self-inflicted*** ". [note: 55] [emphasis in bold and underlined in original; emphasis in italics added]

27 Dr Duflou also disagreed with Ms Lim's main conclusions. He suggested that there were three equally plausible explanations why the deceased would be holding the knife in an (unusual) overhand fashion. These were that:

(a) the deceased had changed her grip on the weapon during the process of dying;

(b) the deceased had held the weapon with her thumb against the top of the handle because it afforded her a better hold and stopped her from cutting herself; and

(c) the weapon had been placed in the deceased's hand by the accused shortly after her death. [note: 56]

Ms Lim, he explained, had simply jumped to the third possibility without evaluating the first two. He also cautioned against drawing conclusions from the relative lack of disturbance observed in the massage cubicle that was the scene of the alleged crime. Though the room was small, it had few loose objects in it and the massage table was unlikely to have moved significantly during a struggle – no matter how violent it was. [note: 57] *Instead, he noted that there was significant blood smearing on the clothes and bodies of both the deceased and the accused and opined that these indicated a violent interaction between the two persons*. [note: 58] The lack of impact spatters on the accused's and deceased's clothing was not conclusive evidence that no violent struggle took place, since abdominal wounds would not necessarily bleed dramatically once they had been sustained. [note: 59] In all, Dr Duflou concluded that Ms Lim's report of 31 January 2007 (CR-2007-00004, see [22] above) provided only one possible reconstruction of the events leading up to the deceased's death; the physical evidence, however, did not rule out other explanations for the deceased's death. [note: 60] *In particular, the evidence was not inconsistent with the possibility that the deceased had sustained her injuries as a result of a violent struggle between her and the accused*.

The case below

The accused's version of events

28 The accused gave a total of seven statements to the police over the course of their investigations. These were admitted at the trial without any objection from the Defence. There were some discrepancies between the various statements – notably between his accounts of how he sustained the first stab wound to his abdomen. In his statement recorded on 19 June 2006 at the hospital, he said that he had turned his back to the deceased in order to walk away but that she had used her left arm to grab his neck from behind and used the knife that she was holding in her right hand to stab him four times; on 22 June 2006 he described the deceased as having lifted up the front portion of his shirt from behind to expose his stomach before she started stabbing him.

29 The general picture which emerged from the accused's statements and testimony in court was

as follows: according to him, he had left his home on 18 June 2006 in order to meet the deceased at Feng Ye to resolve their relationship difficulties. Upon reaching Feng Ye, he had a heated argument with the deceased. She would not end their relationship without receiving some sort of settlement fee or compensation; the accused, in response, refused to make any such payment, even on pain of having the affair exposed to his family. When the accused turned to go, the deceased grabbed hold of him and began to stab him from behind. The accused then turned around, grabbed the deceased's neck, pushed her against the wall, and commenced to struggle with her for control of the knife. In the course of their struggle, the accused claims that he heard the deceased scream. He thought that she might have been stabbed and released his grip, before pushing her onto the massage bed and strangling her about the neck with the intention of rendering her unconscious. The accused claimed that even as he was strangling the deceased, she was able to use the knife to stab him a few more times. He also claimed to have received and then returned phone calls to his daughter whilst in the midst of strangling the deceased before passing out from the pain of his wounds.

The Prosecution's case theory

30 The Prosecution vehemently disputed the accused's account of the events of 18 June 2006. Their case was pitched thus: that the deceased had not been the provocateur in stabbing the accused first; that the accused had first strangled the deceased out of jealousy and/or fear that the latter would reveal their affair to his family; and that there had been no loud or violent struggle from the deceased whilst the strangulation took place. Once the deceased was subdued, her blouse and camisole was lifted and she was stabbed twice in the abdomen. This took place whilst she was lying flat on the massage table and, according to the Prosecution, she was still alive when it took place but died soon after. It was also at this point, when the deceased was incapacitated but still alive, that the Prosecution claims the accused received and/or made the phone call to his daughter – ostensibly to ask for help.

31 The Prosecution then alleged that the accused lifted his shirt and stabbed his own abdomen nine times. Each time, he was "lucky" [note: 61] enough to avoid penetrating a major organ because he deliberately avoided stabbing too deeply. The Prosecution claimed that he knew he would not die if he stabbed himself in the stomach nine times. He then waited for the blood on the knife to dry and "staged" the scene to make it appear as if a violent struggle had taken place. He moved the deceased's skirt (but failed to disarrange the deceased's blouse and camisole), leaned over the deceased in order to drip blood on her, and moved around the cubicle to spread his blood around before he finally placed the knife in the deceased's right hand so that it would look as if she had been wielding the knife.

The Judge's decision

32 The Judge's decision set out the evidence of the various expert witnesses in great detail. Having considered their testimonies, he decided that the accused's account of the events of 18 June 2006 was not supported by the evidence before the court. He highlighted the following inconsistencies:

(a) the accused claimed that the confrontation between him and the deceased was a noisy one. He claimed he shouted at her when she stabbed him and she screamed when she stabbed herself. However, the massage parlour was only subdivided from the hair salon next door by a thin partition and the operator of the hair salon next door, Ms Wong Choon Mee ("Ms Wong"), testified that she had not heard anyone fighting or shouting before the accused's daughter approached her in order to try and gain access to the massage parlour;

(b) the accused's account of the deceased's stabbing herself accidentally whilst standing up was inconsistent with the findings of both Dr Wee and Ms Lim, who both agreed that strangulation had occurred while she was standing upright but that the stabbing had taken place when she was lying down on her back; and

(c) when the accused demonstrated how he had grabbed the deceased's wrist, the re-enactment of the struggle between the deceased and the accused in court using a dummy showed that the knife was – as a result – pointing towards the floor. It had not pointed towards the deceased's abdomen at any point. It was thus unlikely that the deceased could have accidentally stabbed herself as the accused claimed.

33 The Judge, however, chose not to give much weight to Dr Duflou's evidence on the accused's wounds and self-infliction. He noted that Dr Duflou had come to an opinion on the matter without the benefit of the accused's police statements and Ms Wong's evidence; he also noted that Dr Duflou had agreed that the deceased was lying down when she was stabbed – not standing up, as the accused claimed she was. Thus, the Judge did not think that Dr Duflou's evidence assisted the accused in any way and pointed out that Dr Duflou had not been asked if he would have maintained or modified his opinion had the accused's full narrative and Ms Wong's evidence been placed before him.

34 Having evaluated the evidence of the four expert witnesses, the Judge held at [50] of the Judgment that "[t]he state of the pathological evidence is that the [accused's] wounds may have been inflicted *by the accused or by the deceased*" [emphasis added]. And, at [62], he stated that:

> [w]hile [the experts'] findings contradict the accused's account of the stabbing, they do not show that the accused had inflicted the wounds [on the deceased], whether they were inflicted during the struggle against the wall, or while the deceased was on the massage table. [emphasis added]

Having made no determination on the manner in which the deceased sustained the stab wounds to her stomach, the Judge relied instead on the accused's admission that he had strangled the deceased. As this was an act sufficient in the ordinary course of nature to cause death, the Judge held him guilty of murder under s 300(*c*) of the Penal Code unless he could prove that he came within one of the following defences:

(a) private defence under s 96 of the Penal Code and under Exception 2 to s 300 of the Penal Code;

(b) sudden fight under Exception 4 to s 300 of the Penal Code; and

(c) provocation under Exception 1 to s 300 of the Penal Code.

The Judge held that the accused had failed, on the balance of probabilities, to establish defences (a) and (b) above as the review of the evidence cast substantial doubt on the accused's description of the events of 18 June 2006. He had not established that a confrontation or a struggle of the kind that he narrated ever took place; defences (a) and (b) therefore could not apply. As for the defence of provocation, the Judge held that the accused had not said that he was provoked by the deceased or lost self-control when he strangled her. As the essential ingredients were absent, the defence did not apply.

The decision of this court

35 On the one hand, it is clear that the Judge viewed the accused's account of the events of 18 June 2006 with some scepticism. He was impressed by the testimonies of Ms Wong and the experts in forming his assessment of the incident. On theother hand, it is also clear that he did not find the Prosecution's case theory convincing and he made no positive findings in favour of Ms Lim's reconstruction of events. *Crucially*, he did not rule out the possibility that the accused's wounds (or some of them) were inflicted by the deceased; nor did he accept as proved that the deceased's wounds were inflicted by the accused. Yet, in spite of these doubts, the Judge for reasons that are not entirely clear to us found the accused guilty of murder under s 300(*c*) of the Penal Code.

36 The Judge placed undue reliance on the testimony of Ms Wong when it was far from satisfactorily established that Ms Wong was indeed present in her shop (and thus in a position to overhear the noise emanating from the adjoining massage parlour) during the material period. More importantly, however, the Judge failed to make a definitive finding as to how the accused's wounds were sustained. This particular failure was significant as a finding as to how the accused sustained his wounds was crucial for a proper evaluation of the viability of his defences to the charge of murder.

37 We shall deal with both these points in turn.

The testimony of Ms Wong

38 The Judge justified his reliance on Ms Wong's evidence as follows (at [44]–[46] of the Judgment):

> 44 ... For this purpose, it is important to bear in mind that in [the accused's] narrative, there was a noisy confrontation between him and the deceased. ...
>
> 45 The massage parlour was actually within the same shop unit as the adjacent hair saloon. The unit was subdivided into two by a thin partition through which sound can pass. Ms Wong, the operator of the hair saloon who can hear loud talking in the massage parlour gave evidence that she did not hear anything that morning before the accused's daughter spoke to her, and that she then heard a woman scream inside the massage parlour and then heard someone crying.
>
> 46 Ms Wong was an independent witness. It was not disputed that she was in her saloon at the material time, and there was no suggestion that she had any reason to give false evidence against the accused. Against that background, and having observed her when she gave evidence, I accept her as an honest and reliable witness. *Her evidence raised a serious doubt over the accused's description of the events*.
>
> [emphasis added]

In the hearing before us, however, counsel for the accused changed tack and submitted that it had *not* been clearly established that Ms Wong was present in her saloon at the point of time when the accused claimed that the "noisy confrontation" took place. The key, counsel submitted, lay in reconciling the different statements in relation to timing. The accused had left his house for the massage parlour at about 9.45am on the morning of 18 June 2006. His statement of 26 June 2006 gave the time he left as "sometime after 9am, close to 10am" [note: 62] and this was confirmed by his daughter who, in her conditioned statement of 10 May 2007, put the time that her father left the house "at about 9.45am or so." [note: 63] According to his statement given on 19 June 2006, the accused then arrived at the massage parlour at around 10.00am [note: 64] – a timing supported by his evidence that he usually took about 15mins to drive from his home to the massage parlour. [note: 65]

The accused and deceased confronted each other and, according to the accused, their quarrel lasted all of 5 to 10mins. [note: 66] The accused claims he then turned to leave the premises and the deceased stabbed him from behind, whereupon he pinned her to the wall and they struggled for control of the knife for approximately 2mins [note: 67] before she screamed out in pain. [note: 68]

39 Thus, by the accused's account, the "noisy confrontation" between him and the deceased lasted approximately 10 to 12mins after he arrived at the massage parlour at 10.00am that morning. By her own testimony, however, Ms Wong only arrived at her saloon "at about 10.15am". [note: 69] Counsel for the accused argued that it was conceivable that Ms Wong arrived at her saloon only after the noisy confrontation had run its course. Thus, her testimony that she had not heard anyone fighting or shouting before the accused's daughter came knocking on her door could not be seen to cast "serious doubt" on the accused's account of the events of that day. In reply, the Prosecution submitted that this purported timeline was misguided; that the accused arrived at the massage parlour around 10.15am, when Ms Wong was already present in her saloon. They based this on the accused's police statements of 22 and 26 June 2006, where he claimed he had left his house for the massage parlour at "about 10am" [note: 70] or "sometime after 9am, close to 10am". [note: 71] Taking this to mean that he had left his house *at* 10.00am, the Prosecution argued that since it took 15mins for the accused to drive to the massage parlour from his home, he would have arrived at about the same time that Ms Wong entered her saloon. Any noisy quarrel between the accused and deceased, therefore, would have been heard by her.

40 Having considered the submissions of both sides, it seems to us that, contrary to the Judge's view, the serious doubts that have been raised are actually in relation to the value of Ms Wong's evidence. Counsel for the accused correctly pointed out, that while the accused's daughter placed the time that he left home at 9.45am; the accused also stated that he had left "sometime after 9am, close to 10am"; and more pertinently, in the statement to the police that he gave on 19 June 2006 – just the day after the alleged crime – he claimed that "at 10am, [the deceased] opened the shop for business. I was parking my car at the car park." [note: 72] The weight of the evidence, therefore, favours 10.00am as the time of the accused's arrival at the massage parlour and, as a result, it is entirely plausible that the noisy confrontation described by the accused took place before Ms Wong arrived at her saloon. The Prosecution could offer no concrete or objective evidence to challenge this evaluation of the evidence apart from referring again to the accused's estimate that he had left his house at "about 10am" on the day. Both syntactically and as a matter of common usage, however, the words "about 10am" could easily refer to a time up to 15mins before or after 10.00am; the Prosecution's reliance on that one phrase in order to establish their timeline, therefore, is misguided – especially in the light of uncontroverted statements from both the accused and his daughter putting his time of departure closer to 9.45am.

41 Based on the above, therefore, it is not unlikely that Ms Wong did not hear the sounds of a noisy confrontation or violent struggle because she was *not* – as the Judge believed she was – in her saloon at the material time. Her testimony, in and of itself, therefore, would not undermine the accused's account of the events of 18 June 2006. In short, Ms Wong's testimony did not rule out the fact that a violent struggle following a noisy confrontation between the accused and the deceased had indeed taken place. This, however, was not the only improbable factor the Judge relied upon in doubting the accused's account of the events. Before we review the other facts, we should add that the Judge was also mistaken in concluding that it was sufficient to make a finding that Ms Wong's evidence raised "*a serious doubt over the accused's description of the events*" (above at [38]). As the accused only needs establish his defences on a balance of probabilities, the existence of *a* serious doubt alone would not be sufficient to dismiss his version of events.

The Judge's finding of fact

42 As mentioned at [34] above, the Judge made two equivocal findings about the stab wounds sustained by the deceased and the accused. The first (at [62] of the Judgment) was that:

> While [the expert evidence that the deceased was lying on her back when she was stabbed] contradict the accused's account of the stabbing, [it does] not show that the accused had inflicted the wounds, whether they were inflicted during the struggle against the wall, or while the deceased was on the massage table.

The second, at [50] of the Judgment, was that "[t]he state of the pathological evidence is that the wounds may have been inflicted *by the accused or the deceased*" [emphasis added]. Both findings fail to adequately analyse the facts. However, it is the second finding concerning the manner in which the accused sustained the stab wounds to his stomach that causes us the greatest concern. It was an indisputable fact in this case that the accused had sustained nine stab wounds to his stomach – four of which were deep enough to penetrate the abdominal cavity. The significance of these wounds cannot be underestimated. The accused claimed that these wounds were inflicted by the deceased in the midst of a violent struggle; the Prosecution, in order to refute that possibility, submitted that they were *entirely* self-inflicted. Implicitly, therefore, the Prosecution's submissions recognised that once some of the wounds sustained by the accused were found not to be self-inflicted but inflicted by the deceased in the course of a violent struggle, then there might be some basis for the defences of private defence, sudden fight and grave and sudden provocation to be established.

43 A finding as to how the accused's wounds were sustained, therefore, was essential for a proper evaluation of the defences available to the accused. However, in concluding that the accused's wounds "*may* have been inflicted by the accused *or* the deceased" [emphasis added], the Judge did not resolve the central issue in this case. As there is no suggestion that a third person was present at the scene, his conclusion has, in effect, left the door wide open.

44 The apparent reason for this equivocal finding by the Judge was that the experts "did not take a firm position on whether the wounds were self-inflicted" (see the Judgment at [50]). The Judge, it appears, felt that for that reason he too could not take a firm position on the same question. In our view, this was an error on his part. Expert evidence will not always offer a clear answer to every question before the court. This does not excuse a judge from making a crucial finding of fact. Ultimately, all questions – whether of law or of fact – placed before a court are intended to be adjudicated and decided by a judge and not by experts. An expert or scientific witness is there only to assist the court in arriving at its decision; he or she is not there to arrogate the court's functions to himself or herself (see the observations of Winslow J in *Ong Chan Tow v Regina* [1963] MLJ 160 at 162). Where the scientific evidence fails to provide a precise answer, therefore, the court must resort to the usual methods it employs in all other cases which do not require expert evidence: that is – namely – the sifting, weighing and evaluating the objective facts within their circumstantial matrix and context in order to arrive at a final finding of fact. This is the primary duty of a trial judge; its importance cannot be underestimated. Responsibility for an offence must be proven beyond a reasonable doubt; only then may a conviction be upheld as legitimate and sustainable. (See *Sakthivel Punithavathi v Public Prosecutor* ("*Sakthivel*") [2007] 2 SLR(R) 983 at [78]; see also *Jagatheesan s/o Krishnasamy v Public Prosecutor* ("*Jagatheesan*") [2006] 4 SLR(R) 45; *Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890). In our view, it would be wrong to hold that a man was guilty of murder when the Judge failed to make a finding of fact which is crucial to removing a reasonable doubt of the man's guilt. A reasonable doubt is a reasoned doubt (see *Jagatheesan* at [55]) and a judge must be able to say precisely why and how the evidence supports the Prosecution's theory of

an accused's guilt (see *Sakthivel* at [79]) before convicting the latter of an offence. A failure to make a crucial finding of fact fatally undermines this reasoning process.

45 This is not to say that a fact sought to be proved may not be regarded as "not proved" which is one of the distinct concepts of proof under s 3(5) of the Evidence Act (Cap 97, 1997 Rev Ed) (see in this regard *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286). It may well be that a Judge has a "lingering doubt" as to the existence or non-existence of a fact and thus concludes that it is "not proved". But in a criminal matter, where the elements of the offence are concerned, such a doubt could well constitute a reasonable doubt to defeat the Prosecution's case, and where a defence is concerned, such a doubt does not automatically preclude an accused from proving his defence (which is what we are concerned with in this appeal).

46 The accused sustained very serious injuries to his person; these raised the reasonable possibility that the injuries had been inflicted by the deceased and sustained in the midst of a violent struggle, which is a foothold to the accused establishing one of the defences highlighted (see [42] above). In these proceedings, the Prosecution had to convince the court that his injuries were self-inflicted in order to establish its case theory. Because of the unusual factual scenario, the causes of the appellant's wounds were inextricably intertwined with the establishment of both the Prosecution's case and the Defence's case. If the Judge was of the view that the accused's version was not proved because not only were aspects of his testimony unconvincing but the objective facts undermined his defences, he ought to have said so. This was a crucial finding of fact which the Judge failed to consider sufficiently. In our view, the accused's conviction is unsafe as a result of this error.

47 The Judge was presented with two differing accounts of the events of 18 June 2006 in the context of the accused's reliance on several defences. The first was the accused's description of a noisy confrontation followed by the deceased's initiation of a violent struggle; and the second was the Prosecution's case theory of deliberate murder followed by an elaborate ploy on the part of the accused to stage the appearance of a violent struggle by stabbing himself in the stomach nine times. The Judge appears to have felt that the scientific evidence rendered both scenarios either equally likely or equally unlikely occurrences. He did not appreciate that it was also open to him to find that the established facts pointed to a different scenario.

48 The Prosecution in the court below relied heavily on the evidence of Ms Lim – an expert in crime scene reconstruction. The purpose and import of her evidence was made clear by counsel for the Prosecution during the trial: [note: 73]

> [DPP]: Your Honour, it's very clear from – later on, from the evidence of [Ms Lim], that the evidence is that the accused staged the scene, i.e. that he had manipulated the scene to look as if there was a fight ...
>
> ...
>
> [DPP]: [Ms Lim] will be an expert in areas of scene reconstruction, looking at blood trails and blood spatter patterns. Dr Paul Chui, I would attempt to ask him this question, whether he is in a position to comment whether it is one as opposed to another. Then I—I think we can move along there, but [*Ms Lim*] *would be able to say and give her opinion as to why she thinks that this whole scene is staged, the whole crime scene*, your Honour.
>
> [emphasis added]

49 It was Ms Lim *alone* who, amongst the Prosecution's expert witnesses, seemed most certain that the accused's wounds were self-inflicted. Her conclusion, upon a review of all the evidence (including the reports of Drs Wee and Chui), was stated in her report of 31 January 2007 [note: 74] :

> 9. The lack of struggle, the clustering of the nine wounds within the accused's right flank and the left lumbar region of his abdomen, the absence of slash-wounds on his abdomen and the lack of defense injuries on his forearms suggest he attempted little or no avoidance of the multiple stabbing actions. Hence, it could be that some if not all of his nine wounds have been self-inflicted.

However, crime scene reconstruction is, by its very nature, not an exact science; by its very appellation, it invites more conjecture than other forms of scientific and expert evidence. This was acknowledged by Ms Lim herself, under cross-examination [note: 75] :

Q	The fact that you said that she could have been caught by surprised and quickly overwhelmed, this is speculation, isn't it? Where is evidence of that?
A	There was a lack of movement after she was stabbed.
Court:	No, I think the question is even---you said there, "She could have been caught by surprise...", so even you are not making a positive assertion that it was.
Witness:	Yes, that's right.
Court:	So, the answer is "yes", I mean, that part of it is conjectural.
Witness:	Yes.
Court:	You might say I---I draw the conjectural from the surrounding facts, but in the end, it is conjectural.
Witness:	Yes.

50 Given its conjectural nature, therefore, the strength, accuracy and validity of Ms Lim's evidence must be evaluated and weighed carefully. In particular, her conclusion – quoted at [49] above – on the nature of the accused's wounds must be viewed in the light of three points. The first is the very wording used in her report. It is stated that, based on the combination of the nature of the stab wounds and blood evidence, "*it could be that some if not all of his nine wounds have been self-inflicted* [emphasis added]." The wording used does not suggest certainty. This was conceded by Ms Lim under cross-examination [note: 76] :

> Q: ...[Reads] "Hence, it could be that some if not all of his nine wounds have been self-inflicted."
>
> ...
>
> Q: Now, by saying this, are you conceding that some of the injuries found on the accused could have been inflicted by the deceased?
>
> A: Yes, your Honour.

51 The second point of note is a second concession made by Ms Lim during cross-examination. It

has been mentioned at [48] above that the Prosecution sought to rely on Ms Lim's evidence as clear proof that the accused had murdered the deceased in cold blood and staged the scene of the crime. A closer examination of Ms Lim's conclusions from her report (set out at [24] above), however, reveals no such outright statement on her part. This was made even clearer from the evidence elicited during her cross-examination [note: 77] :

Q And in the struggle, the deceased was stabbed. I'm suggesting to you, it was the deceased who first stabbed the accused.

A It is possible.

Q I'm suggesting to you that even when the accused was strangling her, the deceased was stabbing the accused.

A Your Honour, I disagree with that.

Q And I'm suggesting to you the disarray of the deceased's clothes was due to a struggle between her and the accused.

A Your Honour, it is possible.

It is evident from the above that it was the possibility of the deceased stabbing the accused whilst the accused was strangling her on the massage bed that Ms Lim actually took issue and disagreed with on the basis of the blood spatter evidence. She openly conceded, however, that it was possible that the deceased had first stabbed the accused and that the disarray of the deceased's clothing was due to a struggle between her and the accused.

52 These two concessions by the Prosecution's most important witness should, of themselves, suffice to more than weaken the Prosecution's theory that there had been no violent struggle between the accused and deceased and that the accused had stabbed himself in order to create the appearance of such a struggle. However, it is also useful to examine her evidence alongside the evidence of the other expert witnesses who appeared on behalf of either the Prosecution or the accused: namely, Drs Wee, Chui, and Duflou. All three are medically qualified and their evidence was clear: self-infliction could not be precluded as an explanation for the wounds sustained by the accused. None of these medical experts were willing to state the proposition any more strongly than this. Dr Chui, in his report, took pains to emphasise the imponderables involved (see [21] above). He maintained this circumspection during his examination-in-chief [note: 78] :

Q All right, Dr Chui ... Does absence of hesitation mark preclude self-infliction?

A Er, no, your Honour. Er, at best I would say that hesitation marks favour self-infliction, but absence does not preclude it.

Q Now, the wounds described by the operating doctors have been described as stab wounds ... Does the presence of stab wounds as oppose to superficial or incise wound, preclude self-infliction?

A It does not preclude self-infliction, *neither does it preclude other possible situations, er, for example accidental or, er, you know deliberate injuries by other persons. You need to look at those in context*, that means interpret them in---in relation to the scenario that might be there.

[emphasis added]

Similarly, Dr Duflou – giving evidence on the accused's behalf, where he might have been expected to testify that the wounds were *not* self-inflicted – testified in his examination-in-chief that [note: 79]:

> Er, I think the … short answer is, *I don't know. Erm, [the wounds] may have been self-inflicted. They certainly don't show much of a feature of self-infliction to me, but I can't exclude it*. The one thing that goes for self-infliction, again without taking the reconstruction into account, is that the clothing was not damaged, probably. Erm, but that to me really is the only aspect which pushes it towards self-infliction as opposed to the others which push it away from self-infliction. [emphasis added]

53 The language of non-preclusion is noteworthy. It is also capable of being misleading. As Omrod LJ noted in *R. v Bracewell (Michael Geoffrey)* (1979) 68 Cr App R 44 at 49:

> The available data may be inadequate to *prove* scientifically that the alternative hypothesis is false, so the scientific witness will answer "No. I cannot exclude it," though the effect of his evidence as a whole can be expressed in terms such as " ***But for all practical purposes' (including the jury's) it is so unlikely that it can safely be ignored*** ." [emphasis in italics original; emphasis in bold italics added]

From the context of his evidence, this was clearly the message that Dr Duflou's concession of "non-exclusion" was intended to express; it was presumably what Dr Chui meant by his language of non-preclusion as well. Ms Lim is not medically qualified. She acknowledged, under cross-examination, that she "piggyback[s] on [her fellow] experts' opinion" [note: 80] and relies on the evidence of others who are experts in their own field. [note: 81] Her conclusions, therefore, should not differ greatly from theirs, as the following exchange under cross-examination illustrates [note: 82]:

> Q So if you say there are no defensive injuries and your - certain part of your opinion is based on the fact that there is no defensive injuries and the experts say that there were these defensive injuries, your opinion will be incorrect?
>
> A I've always, like what your Honour say, piggyback on the experts' opinion.
>
> Q Yes. So---so my question is very simple. You say there is defensive injuries and the experts say there are no defensive injuries.
>
> ...
>
> A In the first place, I'll never say that there is defensive injuries if the experts say there wasn't.

The same should hold, therefore, for her conclusions in respect of how the accused sustained the wounds to his stomach. While Ms Lim may have had the benefit of considering blood spatter evidence that the medical experts did not; nevertheless, one is hard put to see how the addition of blood spatter analysis could transform the language of non-preclusion (which, as pointed out above, encompasses a range of meanings from "probable" to "so unlikely that it can be safely ignored") to "very likely" or absolute certainty. This is especially given the medical evidence of Dr Duflou, a pathologist of considerable experience, who testified that it is "entirely reasonable" [note: 83] for stomach wounds to bleed only in a limited and delayed fashion, such that there would not be a

dripping down of blood. [note: 84] It was his evidence that one did not necessarily get large amounts of blood flowing externally from a stomach wound, [note: 85] particularly where there was no injured internal organ to produce the majority of the blood. [note: 86] It was also his evidence that none of the wounds sustained by the accused would have been immediately incapacitating and that it would have been entirely possible for the accused to have performed a range of activities (such as continuing to struggle with the deceased) like an uninjured person without having been aware of his having sustained some or all of the stab wounds. [note: 87] This evidence of his was not seriously challenged by the Prosecution during cross-examination.

54 Thus, the analysis above reveals that even the Prosecution's most determined expert witness acknowledged that it was possible that some of the accused's wounds were inflicted by the deceased, that the deceased was the one who started stabbing the accused first, and that there was a struggle between the accused and deceased. These concessions must raise very serious questions about the Prosecution's undue reliance on Ms Lim's evidence to establish their theory of how the accused had come to sustain his injuries. Nevertheless, Ms Lim's evidence is only one aspect of the totality of evidence before the court; it must be carefully evaluated alongside the other objective evidence in order to determine whether the accused is able to establish, as part of his defence, that he had sustained his wounds in a violent struggle with the deceased.

55 The only objective evidence available to the court was the appearance of the scene of the crime itself and the state in which the deceased's body was found. Again, an evaluation of Ms Lim's evidence – given in the role of an expert in crime scene reconstruction – is crucial in the light of her insistence that the scene at the massage parlour was staged. The Judge set out the evidence of Ms Lim in great detail from [31]–[36] of the Judgment. Having done so, however, he made no further reference to her conclusions, apart from relying on her evidence that the deceased was probably stabbed whilst in a supine position (see Judgment at [61]). Plainly, this omission amounted to an implicit rejection of Ms Lim's conclusions; and, in our view, the Judge was right not to rely on her interpretation of the scene.

56 It was noted in *Sakthivel* at [76] that the same rules apply to the evaluation of expert testimony as with any other categories of witness testimony: content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations, though demeanour more often than not recedes into the background as a yardstick. In this case, however, the main issue is with Ms Lim's rather over enthusiastic allegiance to a particular case theory. There is much that even now remains uncertain and unknown about the events of 18 June 2006 and what happened between the deceased and the accused on that day. Regrettably, the following facts were not looked into by the investigators:

(a) whether the massage table was moved at any point;

(b) whether there was any blood spatter apart from that already identified on the massage table and carpet because *nothing apart from a visual inspection was carried out*;

(c) what the exact depths of the accused's stab wounds were and how badly they would have bled;

(d) whether the "neatly" shifted blouse and camisole could be attributed to the paramedic's action of "slowly [lifting] up [the deceased's] blouse" [note: 88] in order to affix the heart monitoring electrodes to the deceased's lower chest;

(e) whose blood made up the smudge or stain on the deceased's right knee which Ms Lim suggested showed signs of having been "lifted up" [note: 89] from a horizontal position by a blood stained hand holding on to the deceased's right knee, since that particular bloodstain had not been swabbed, subjected to DNA testing to identify the source, or fingerprinted; [note: 90]

(f) how copious amounts of the accused's blood got onto the panties of the deceased [note: 91] when these did not have the appearance of smudges but of blood drips or flow; [note: 92] and

(g) whether the four small cuts found in the accused's T-shirt were, in fact, caused by stabbing from the knife (Dr Duflou suggested the cuts could represent missed stabbing attempts [note: 93] while Ms Lim also accepted the possibility that they could have been caused by stabbing from the knife in her report) [note: 94] or caused by cutting by medical personnel. Ms Lim's report [note: 95] and her testimony in court [note: 96] suggested that the latter was most likely, but no questions were ever asked of the medical team and the cuts' origins were thus never confirmed.

57 The theory that the scene of the crime was staged is also rife with improbabilities. In their skeletal submissions to this court, [note: 97] counsel for the accused pointed out that Ms Lim had, in her report, noted the absence of bloody imprints from the knife blade on the deceased's skirt. She postulated that this absence of blood could mean that the knife had hardly been in contact with the skirt or that the blood on the blade had already dried before contact. [note: 98] During her testimony in court, she appeared to favour the second explanation – pointing to photographs taken at the crime scene to show that the knife had been in contact with the skirt. [note: 99] According to her own testimony, however, it would take "about 30 minutes for blood on a knife blade to be sufficiently dry before it does not leave any imprint [on the deceased's skirt]". [note: 100] Having concluded in her report that "[i]t is likely that the knife was last used to stab the accused" [note: 101] [emphasis in underline in original], the implication of her evidence as a whole is that the accused first stabbed the deceased before stabbing himself and *waited for half an hour* before he finished staging the scene by smudging his blood around the small massage cubicle and placing the knife in the deceased's hand. In our view, there is force in the accused's submission that such a reconstruction of events is inherently improbable. Such inherent improbabilities in the Prosecution's case theory, alongside the uncertainty in the evidence (both forensic and otherwise) as a whole, make it extremely difficult to accept Ms Lim's absolute certainty that the scene was staged. Her suggestion that the accused was scheming, cunning and calculative enough to manipulate the blood spatter and the deceased's clothing as well as ruthless and desperate enough to stab himself to avoid a murder charge needs to be supported by concrete evidence. The failure by investigators to establish the key facts pointed out above at [56] does not help in any way to substantiate the Prosecution's case theory.

58 The reliability of Ms Lim's conclusions may also be questioned for other reasons. Ms Lim often gave her opinion on areas unrelated to her area of expertise as if it carried the weight of an expert opinion; she also infused her reconstruction report with suppositions that, in the end, she had to admit, amounted to pure conjecture (see, *eg*, cited portion of the Notes of Evidence found at [49] above). For instance, whilst pointing out the stains of the accused's blood on the deceased's right foot, she noted that the pattern it disclosed was that of passive drips [note: 102] and postulated that this could have been achieved if the accused, after sustaining the wounds to his stomach, had held up his T-shirt and leaned over the deceased's leg. [note: 103] She observed how surprising it would be for the deceased to have taken the trouble of stabbing the accused in his stomach from behind him

when it would have been easier to stab him in the back. [note: 104] She also opined on the strangeness of retrieving a call whilst in the midst of a violent life-and-death struggle. [note: 105]

59 Furthermore, Ms Lim showed a tendency to give undue weight to those items of evidence that supported her reconstruction theory whilst playing down those pieces of evidence that did not agree with it. For instance, while her initial assessment of the evidence was that "[the] outer garments [of the deceased] were not in disarray except for the lifting of the lower portion of the blouse and camisole and the misalignment of the skirt", [note: 106] her final conclusion was that the findings suggested little or no violent struggle from the deceased when she was stabbed because, *inter alia*, "[t]he deceased's clothing was undamaged and not in disarray. The bow on the deceased's blouse was neatly tied and all the buttons were intact and buttoned". [note: 107] There was no mention at all of the misalignment of the skirt by nearly 180 degrees or the lifting of the lower portion of the blouse and camisole and no justification is provided for the dismissal of these two otherwise reasonable signs as insufficient to constitute "disarray" or to indicate the occurrence of a struggle. Further evidence of Ms Lim's tendency to quickly dismiss evidence that did not fit with her theory of the crime may be seen from her testimony concerning the supposed lack of defensive wounds found on the accused [note: 108] :

> A In all likelihood, if you are holding a knife and someone is strangling you, then from my observation, yes, you'd be using the knife to stop the person from strangling you.
>
> Q Yes, thank you.
>
> A And---can I continue?
>
> Q Yes.
>
> A If that is so, then I should expect to see more wounds on him, more slash on his body, his exposed parts, his forearms, his face, his clothing.
>
> Q Ms Lim, he already got nine wounds. How many more wounds would satisfy you?
>
> A Those are stab wounds, it's different.

This intractability on her part is particularly worrying in the light of the fact that, as acknowledged by Dr Chui at [20] above, the accused's body was never examined in its entirety for defensive wounds. In our view, therefore, Ms Lim's reliability as an expert witness in this case may rightly be called into question. The Judge was quite justified, at least, in refusing to accept her testimony as conclusively demonstrating – as the Prosecution claimed it would (see [48] above) – that the accused staged or manipulated the scene in order to create the appearance of a violent struggle.

60 Having decided not to accept Ms Lim's evidence that the signs of a violent struggle (including the wounds suffered by the accused) were staged, however, the Judge ought to have made the consequential findings of fact. He should have determined whether or not the accused's wounds were self-inflicted or not; and, if not, he should have determined whether they were sustained in the course of a violent struggle. Admittedly, these findings would not have been easy to make but this was not a case where the evidence was so sparse that whether the wounds were self-inflicted or inflicted by the deceased would have been left "not proved" (see [61]–[62] below). We accept though that perhaps there was much that was unclear about the incident and the evidence presented by the Prosecution. For instance, there seems to have been no detailed inquiry into who was

responsible for bringing the knife to the scene. The accused asserted in his statement of 22 June 2006 that the knife had been his, but he had given it to the deceased two to three weeks prior to 18 June 2006 after he had discovered that the knives in her house were not sharp enough. He claimed he took the knife from his cooked food stall at Tampines, but the statements of the cooks who worked (or had worked) at the stall indicated that none of them recognised the knife [note: 109] and the evidence on the subject ended there. A knife is an odd object to have lying around a massage parlour. It must have been deliberately brought to the scene and the act of bringing it would have amounted to a clear sign that whoever did so intended to do another person serious harm. There was insufficient evidence before the court, however, for it to make a determination on this crucial fact. *The Prosecution also failed to adduce evidence of the phone calls made to and by the accused during the incident on 18 June 2006*. Such phone records would have been invaluable in establishing a timeline for the events of that morning and they could have been obtained easily. There was also no evidence adduced of the deceased's own mental state – none, even, concerning her life or personality in general. Her own phone records were also not produced. This could have also helped establish who called whom and could have been another objective evidential item against which to test the accused's version of events (see above at [29]). As mentioned at [4] above, unfortunately little is known of the deceased.

61 In spite of these shortcomings in the Prosecution's evidence, however, there was still sufficient objective evidence to show that an intense struggle had taken place on the morning of 18 June 2006. There were stains of the accused's blood all over the deceased: on her neck, both her thighs, her right foot, her right shoe, on the front upper left and right areas and below the right armhole of her blouse, on the front lower central area of her skirt and the front and back of her panties. [note: 110] His blood was also found all over the massage table; [note: 111] some of it was even found mixed with the accused's on the massage table and carpet. [note: 112] The deceased's skirt was, as mentioned above at [59], misaligned (or "disarrayed", in the language of counsel in the trial below) by nearly 180 degrees. There is also the significant evidence – which was not contradicted but explicitly accepted by counsel for the Prosecution in the appeal before us – of Dr Duflou that the petechial haemorrhaging on the deceased's face indicated that, at least part of the time, "there was release of the compression of the neck and then probably episodes of reapplication again" [note: 113] – *ie*, *that the pressure of strangulation was intermittent and not continuous*. This would be entirely consistent with a struggle taking place. All three experts also agreed that the deceased was strangled before being stabbed and this strangulation was carried out when she was in a vertical position, possibly standing upright. The latter point, in particular, is consistent with the accused's account of events.

62 The evidence above suggests, therefore, that a struggle took place while the accused strangled the deceased and was interrupted at some points. It is not clear who delivered the first blow, and it is reasonably plausible that some of the stab wounds to the accused were self-inflicted. However, it was also possible that the accused's wounds were inflicted by the deceased: this was acknowledged by the Judge (see [34] above) and Ms Lim (see [50]–[51] above) and it is not contradicted by the objective evidence. The possibility that the accused's wounds were inflicted by the deceased raises the very real and reasonable possibility that a short but intense struggle had taken place; and that possibility renders the defences – particularly of provocation or sudden fight – viable.

63 In coming to the conclusion above, we are aware that the Judge had the advantage of questioning the witnesses and viewing the accused's re-enactment of the events of 18 June 2006. However, an appropriate balance must be struck between recognising and respecting this advantage of the Judge and the appellate court's duty to ensure that a conviction is safe, particularly in a capital case. In this case, the usefulness of the re-enactment was highly questionable, having been

done with a dummy. The dynamism necessary for illustrating the progress of an unscripted struggle between two persons was entirely lacking.

64 The difficulty with this case is that the Judge did not definitively find that the accused's wounds were self-inflicted or that no violent struggle took place. He did find (at [65] of the Judgment) that "the accused had not proved that the deceased had inflicted the wounds on his abdomen in the manner he described" (see [29] above for the accused's account); however, as stated at [34] above, he also concluded that *"[t]he state of the pathological evidence is that the [accused's] wounds may have been inflicted by the accused or by the deceased"*. It was a finding of fact, therefore, that the accused's wounds *may have been* inflicted by the deceased. Where the Judge erred, however, was in failing to appreciate the impact that this equivocal and uncertain finding would have on the viability of the accused's defences. *In difficult cases such as this where the court cannot decide with any degree of certainty between alternate case theories, the benefit of the doubt has to be given to the accused*. As this court has previously stated in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306, at [34]:

> It is trite law that a scenario which favours the accused should be preferred in cases where multiple inferences may be drawn from the same set of facts (see *Tai Chai Keh v Public Prosecutor* [1948-1949] MLJ Supp 105 at 108 and *PP v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 ... at [85]).

While we do not accept that the accused has been completely candid in his account of the events of 18 June 2006, we are prepared to say that the weight of the established evidence tilts in favour of the finding that some of his wounds were not self-inflicted. The Prosecution's failure to fill in the gaps in their case (see [56] and [60] above) should also weigh against a finding in favour of their case theory.

65 In our view, therefore, it has been established on the balance of probabilities that there was a struggle during which both protagonists were injured. It is not clear how the struggle began and who struck the first blow. But as astutely pointed out in *State of Bihar v Mohammad Khursheed* AIR [1971] SC 2268 at [7]:

> It seems to us, however, that the finding of the High Court that there was a clash between the respondent on the one side and the deceased on the other about the time and the place of occurrence is not vitiated as there is some material to support this finding. Once this finding is accepted then it must follow that the prosecution has not put forth the genesis and manner of the occurrence fully. The prosecution has not been able to explain why the respondent should suddenly take in his head to attack the deceased while he was in the company of three persons, mentioned above, and there must have been some immediate reason why this incident took place. *If there is a doubt as to the origin of the fight the benefit must go to the respondent*. [emphasis added]

Similarly, in this case, the Prosecution has not been able to satisfactorily explain why this was a premeditated murder in cold blood. It was, on its face, highly unlikely that an accused who was due back home for a special family outing went to the massage parlour with murder on his mind. The Prosecution acknowledged in the appeal before us that while this was the level they pitched their case at in the trial below, there was very little evidence to actually support it. The lack of satisfactory evidence concerning the origins of the knife, for instance, made such a case theory difficult to maintain.

66 In addition, we note the following fact. There was no suggestion made that the accused was

prone to lash out physically. His own evidence concerning the deceased's history of intemperate behaviour went un-rebutted (though not unchallenged): he testified that in response to his advising her not to drink so much, she had previously slapped and punched his head and that just a few days before the incident on 18 June 2006, she had slapped and punched his head again when they argued over her alleged affair. [note: 114] Both times, he did not retaliate. Even assuming, therefore, that he had initiated the fatal chain of violent actions on 18 June 2006, it would be reasonable to believe that for him to have done so there must have been some very grave provocation or assault on his person that went beyond slapping or punching on the part of the deceased.

67 With the facts above compounded by the lack of clarity and the worrying gaps in the Prosecution's case as to what actually transpired, it would be unsafe to conclude that this was a case of murder in cold blood. Rather it appears to have been a death caused in the heat of the moment, either upon a sudden fight or grave and sudden provocation and we find so. The accused is only guilty of having committed culpable homicide not amounting to murder.

Conclusion

68 For the reasons given above, we set aside the accused's conviction of murder under s 300(*c*) of the Penal Code and find him guilty of culpable homicide not amounting to murder under s 299 of the Penal Code. The case is remitted to the Judge for sentencing pursuant to s 304(*a*) of the Penal Code.

[note: 2] Record of Proceedings, Volume 4A, pg 665

[note: 3] Record of Proceedings, Vol 2, pg 640, lines 12-22

[note: 4] Record of Proceedings, Vol 2, pg 698, lines 15-16

[note: 5] Record of Proceedings, Vol 2, pg 687, lines 12-14

[note: 6] Record of Proceedings, Vol 2, pg 687-688

[note: 7] Record of Proceedings, Vol 2, pg 708, lines 8-9

[note: 8] Record of Proceedings, Exhibits Vol 4A, pg 652

[note: 9] Record of Proceedings, Vol 4A, pg 672

[note: 10] Record of Proceedings, Exhibits Vol 4A, pg 144

[note: 11] Record of Proceedings, Exhibits Volume 4A, pg 537-540

[note: 12] Record of Proceedings, Exhibits Vol 4A, pg 537A, para 12

[note: 13] Record of Proceedings, Vol 4A, pg 540

[note: 14] Record of Proceedings, Vol 4A, pg 540

[note: 15] Record of Proceedings, Vol 1A, pg 238

[note: 16] Record of Proceedings, Vol 1A, pg 239

[note: 17] Record of Proceedings, Vol 1A, pg 244

[note: 18] Record of Proceedings, Vol 1A, pg 244-245

[note: 19] Record of Proceedings, Exhibits Vol 4A, pg 538A

[note: 20] Record of Proceedings, Vol 1A, pg 251

[note: 21] Record of Proceedings, Vol 1A, pg 254

[note: 22] Record of Proceedings, Vol 1A, pg 265

[note: 23] Record of Proceedings, Vol 1A, pg 280

[note: 24] Record of Proceedings, Vol 1A, pg 299

[note: 25] Record of Proceedings, Vol 1A, pg 312

[note: 26] Record of Proceedings, Vol 1A, pg 298

[note: 27] Record of Proceedings, Exhibits Volume 4A, pg 541-543

[note: 28] Record of Proceedings, Vol 1, pg 175-176

[note: 29] Record of Proceedings, Exhibits Volume 4A, pg 543

[note: 30] Record of Proceedings, Vol 1, Notes of Evidence, Day 3 – 24 March 2008, pg 168-173

[note: 31] Record of Proceedings, Vol 1, Notes of Evidence, Day 3 – 24 March 2008, pg 169

[note: 32] Record of Proceedings, Vol 1, pg 215

[note: 33] Record of Proceedings, Vol 1, pg 210, line 24

[note: 34] Record of Proceedings, Vol 1, pg 211

[note: 35] Record of Proceedings, Vol 1, pg 210, lines 13-21

[note: 36] Record of Proceedings, Vol 1, pg 207, lines 31-32

[note: 37] Record of Proceedings, Vol 1, pg 188, line 30

[note: 38] Record of Proceedings, Vol 1, pg 210 (lines 4-12) and pg 226 (lines 6-15)

[note: 39] Record of Proceedings, Vol 1A, pg 328

[note: 40] Record of Proceedings, Vol 1A, pg 329, lines 16-18

[note: 41] Record of Proceedings, Vol 1A, pg 325, lines 1-4

[note: 42] Record of Proceedings, Exhibits Volume 4A, pg 550-564

[note: 43] Record of Proceedings, Exhibits Volume 4A, pg 589-608

[note: 44] Record of Proceedings, Exhibits Volume 4A, pg 565-588

[note: 45] Record of Proceedings, Exhibits Volume 4A, pg 563; see also P47 and P48 on pg 497 of the same Volume

[note: 46] Record of Proceedings, Vol 1, Notes of Evidence, Day 4 – 25 March 2008, pg 249

[note: 47] Record of Proceedings, Vol 1, Notes of Evidence, Day 4 – 25 March 2008, pg 265

[note: 48] Record of Proceedings, Exhibits Vol 4A, pg 766

[note: 49] Record of Proceedings, Exhibits Vol 4A, pg 650

[note: 50] Record of Proceedings, Exhibits Vol 4A, pg 771

[note: 51] Record of Proceedings, Exhibits Vol 4A, pg 772

[note: 52] Record of Proceedings, Exhibits Vol 4A, pg 772

[note: 53] Record of Proceedings, Vol 3, pg 906

[note: 54] Record of Proceedings, Exhibits Vol 4A, pg 773

[note: 55] Record of Proceedings, Exhibits Vol 4A, pg 773

[note: 56] Record of Proceedings, Exhibits Vol 4A, pg 774

[note: 57] Record of Proceedings, Exhibits Vol 4A, pg 776

[note: 58] Record of Proceedings, Exhibits Vol 4A, pg 776

[note: 59] Record of Proceedings, Exhibits Vol 4A, pg 777

[note: 60] Record of Proceedings, Exhibits Vol 4A, pg 778

[note: 61] Record of Proceedings, Vol 1, Notes of Evidence, Day 3 – 24 March 2008, pg 188

[note: 62] Record of Proceedings, Exhibits Vol 4A, pg 682

[note: 63] Record of Proceedings, Exhibits Vol 4A, pg 818

[note: 64] Record of Proceedings, Exhibits Vol 4A, pg 655

[note: 65] Record of Proceedings, Exhibits Vol 4A, pg 682

[note: 66] Record of Proceedings, Exhibits Vol 4A, pg 689

[note: 67] Record of Proceedings, Exhibits Vol 4A, pg 683

[note: 68] Record of Proceedings, Exhibits Vol 4A, pg 679

[note: 69] Record of Proceedings, Exhibits Vol 4A, pg 832

[note: 70] Record of Proceedings, Exhibits Vol 4A, pg 665

[note: 71] Record of Proceedings, Exhibits Vol 4A, pg 682

[note: 72] Record of Proceedings, Exhibits Vol 4A, pg 655

[note: 73] Record of Proceedings, Vol 1, pg 187, lines 9-24

[note: 74] Record of Proceedings, Exhibit Vol 4A, pg 588

[note: 75] Record of Proceedings, Vol 2, pg 582, lines 19-30

[note: 76] Record of Proceedings, Vol 2, pg 589-590, lines 24-32 and 1

[note: 77] Record of Proceedings, Vol 2, pg 591-592, lines 27-32 and lines 1-3

[note: 78] Record of Proceedings, Vol 1, pg 185-186, lines 26-29 and lines 2-7

[note: 79] Record of Proceedings, Vol 3, pg 913, lines 19-27

[note: 80] Record of Proceedings, Vol 1A, pg 503, line 24

[note: 81] Record of Proceedings, Vol 1A, pg 502, line 28-30

[note: 82] Record of Proceedings, Vol 1A, pg 503, lines 21-32

[note: 83] Record of Proceedings, Vol 3, pg 922, line 23

[note: 84] Record of Proceedings, Vol 3, pg 921, lines 4-17

[note: 85] Record of Proceedings, Vol 3, pg 953, lines 6-7

[note: 86] Record of Proceedings, Vol 3, pg 953, lines 27-29

[note: 87] Record of Proceedings, Vol 4A, pg 776

[note: 88] Record of Proceedings, Exhibits Vol 4A, pg 812-813

[note: 89] Record of Proceedings, Exhibits Vol 4A, pg 568, points 16 and 17

[note: 90] Record of Proceedings, Vol 1, pg 528, lines 5-6

[note: 91] Record of Proceedings, Exhibits Vol 4A, pg 574, "Deceased and her apparel", point 7

[note: 92] Record of Proceedings, Exhibits Vol 4A, pg 740

[note: 93] Record of Proceedings, Exhibits Vol 4A, pg 777

[note: 94] Record of Proceedings, Exhibits Vol 4A, pg 571

[note: 95] Record of Proceedings, Exhibits Vol 4A, pg 571

[note: 96] Record of Proceedigns, Vol 1, pg 465-477

[note: 97] Appellant's Skeletal Submissions, pg 78

[note: 98] Record of Proceedings, Exhibits Vol 4A, pg 570

[note: 99] Record of Proceedings, Vol 3, pg 1089, lines 15-31

[note: 100] Record of Proceedings, Vol 3, pg 1090, lines 15-16

[note: 101] Record of Proceedings, Exhibits Vol 4A, pg 585

[note: 102] Record of Proceedings, Vol 1, pg 363-364

[note: 103] Record of Proceedings, Vol 1, pg 365

[note: 104] Record of Proceedings, Vol 1, pg 492

[note: 105] Record of Proceedings, Vol 1, pg 491

[note: 106] Record of Proceedings, Exhibits Vol 4A, pg 558, point 3.4.5.2.2

[note: 107] Record of Proceedings, Exhibits Vol 4A, pg 584, point 5(d)

[note: 108] Record of Proceedings, Vol 2, pg 580-581, lines 23-32 and line 1

[note: 109] Record of Proceedings, Exhibits Vol 4A, pgs 152, 154 and 156

[note: 110] Record of Proceedings, Exhibits Vol 4A, pg 574

[note: 111] Record of Proceedings, Exhibits Vol 4A, pg 575

[note: 112] Record of Proceedings, Exhibits, Vol 4A, pg 576 and 577

[note: 113] Record of Proceedings, Vol 3, pg 901, lines 27-29

[note: 114] Record of Proceedings, Vol 2, pg 708; and Record of Proceedings, Exhibits Vol 4A, pg 670