

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

[2021] SGHC 135

Criminal Case No 15 of 2019

Between

Public Prosecutor

And

Daryati

GROUND OF DECISION

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

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Public Prosecutor

v

Daryati

[2021] SGHC 135

General Division of the High Court — Criminal Case No 15 of 2019

Valerie Thean J

23 April, 13–16, 20–23, 26–29 August, 3–4 September 2019, 3–4 March, 6 April, 21 September, 6–8 October 2020, 8–10 February, 23 April 2021

10 June 2021

Valerie Thean J:

Introduction

1 Ms Daryati (“the accused”) initially faced a charge under s 300(a) of the Penal Code (Cap 224, 2008 Rev Ed) for the murder of Mdm Seow Kim Choo (“the deceased”). After the Prosecution closed its case on 4 March 2020, the Defence made further representations. On 6 April 2020, the charge was amended from s 300(a) to s 300(c) of the Penal Code, which read as follows:

That you, DARYATI, on the 7th day of June 2016, at or about 8.32 p.m., at 50C Lorong H Telok Kurau, Singapore, committed murder by causing the death of one Seow Kim Choo, female, 59 years old, *to wit*, by slashing and stabbing the said Seow Kim Choo multiple times in the head, including the face, scalp and neck, with the intention of causing bodily injury to the said Seow Kim Choo, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under Section

300(c) and punishable under Section 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

2 A further forensic report specifically to address the requirements of s 300(c) and an Agreed Statement of Facts (“ASOF”) were admitted. The accused confirmed that she did not challenge the Prosecution’s evidence on her mental state. On the basis of the evidence tendered and the accused’s admissions, I convicted the accused on the amended charge. While the Prosecution indicated that it would not seek the death sentence, an adjournment for mitigation and sentencing at a later date was sought by defence counsel and acceded to. At the adjourned hearing on 21 September 2020, defence counsel informed that the accused wished to rely on the defence of diminished responsibility.¹ I set her conviction aside for that purpose, with the agreement of the Prosecution. The accused thereafter testified in her own defence. Dr Tommy Tan (“Dr Tan”) gave expert evidence in support. The Prosecution recalled Dr Jaydip Sarkar (“Dr Sarkar”), who had testified earlier as part of the Prosecution’s case, to give rebuttal evidence.

3 On 23 April 2021, I found that the accused had not proved the defence of diminished responsibility on the balance of probabilities. I also found that the Prosecution had proved the charge as framed against the accused under s 300(c) of the Penal Code beyond a reasonable doubt. I convicted her on the charge and sentenced her to a term of life imprisonment. These are my grounds of decision.

¹ Notes of Evidence (“NEs”) 21 September 2020, p 2 lines 7–27.

Agreed Facts

The accused's employment

4 The accused is an Indonesian national who at the material time was employed as a domestic helper in a home in the Telok Kurau area (“the House”). Her duties included cooking, cleaning, walking the family dogs, doing laundry and watering plants.² The deceased and her husband lived at the House with their two sons (“Andrew” and “Wei Yang”), a daughter-in-law (“Rowena”) and two grandchildren. The accused shared a room with Don Hayati, a second helper in the House who was employed by the deceased’s daughter-in-law.³ Their room was on the first floor of the house.⁴

Motivation, preparation and the events of 7 June 2016

5 After the accused began her employment on 13 April 2016, she began to miss her lover known as “Indah”, who was working in Hong Kong, and became homesick, wanting to return to Indonesia.⁵ However, the accused was unable to do so as her passport was being kept in a locked safe in the master bedroom, which was on the second floor of the House. The accused was aware of this and that the Deceased and her husband, Mr Ong, retained the keys to this safe.⁶ As she had just commenced her employment, she did not have money to return to Indonesia. Her family required her to work in Singapore⁷ because her father had suffered a stroke and needed money for medicine, and her younger

² ASOF at para 5.

³ ASOF at para 3.

⁴ ASOF at para 7.

⁵ ASOF at para 10.

⁶ ASOF at para 11.

⁷ NEs 6 October 2020, p 13 lines 29–31.

sister had school fees to pay. She also wanted to start a business when she returned to Indonesia. She believed that there was money in a drawer in the office on the first floor of the House, and knew that the deceased had the keys to this drawer.⁸ The accused knew that the deceased would keep the keys for both the safe and the drawer in the pocket of her pants, and it would be difficult to steal them. She devised a plan sometime between May and June 2016 where she would threaten the deceased with a knife to obtain the keys from her, and then retrieve her passport and steal the money before fleeing to Indonesia. The accused was prepared to attack and kill the deceased if she refused to comply with her demands.⁹

6 On 12 May 2016, the accused wrote in her diary:¹⁰

I must carry out this plan quickly. I have to be brave even though life is at stake. I am ready to face all risks/consequences, whatever [the] risk, I must be ready to accept it. I hope that this plan succeed and run smoothly.

My employer's family is my target

DEATH!!!

7 Around the same time, the accused told Don Hayati about her plan and enlisted her help. She instructed Don Hayati to distract Mr Ong on the first floor by talking to him, and then turning off the CCTV and electricity supply at the right time. Whilst Mr Ong was busy restarting the power, the accused and Don Hayati would steal money from the drawer in the office and make their escape. Don Hayati agreed. The accused had not told her, however, about her plan to

⁸ ASOF at para 12.

⁹ ASOF at para 13.

¹⁰ ASOF at para 14; Exhibit P706 at “Deluxe 11”.

threaten the deceased with a knife.¹¹ In addition, the accused had previously observed the deceased's brother, Seow Kok Ling ("Mr Seow") bringing substantial amounts of money whenever he visited the house, and as such told Don Hayati that they would carry out the plan on a date that he visited the house.¹² On 2 June 2016, the accused drew a map in her diary detailing the layout of the house to plot the path that she would take to get her passport, to the money, and to her escape.¹³

8 On 6 June 2016, the accused told Don Hayati to alert her when Mr Seow next came to the house. On 6 and 7 June 2016, the accused hid weapons on the second floor of the house, including the master bedroom and the attached toilet, including a Kukri knife, which she hid at the walk-in wardrobe area of the master bedroom; a hammer, which she hid next to the study table in Wei Yang's room on the second floor; and a short knife, which she hid in a basket under the sink of the master bedroom toilet. The knives were for her to attack the deceased, and the hammer was to hit Rowena if she came down from the third floor of the house.¹⁴

9 At around 5.00pm on 7 June 2016, the deceased told the accused to cook dinner because Mr Seow was coming over.¹⁵ At about 6.00pm, Mr Seow arrived and went to the office with his daughter, the deceased and Andrew. The accused walked outside the office and saw Mr Seow counting \$50 bills and \$100 bills.¹⁶

¹¹ ASOF at para 15.

¹² ASOF at para 17.

¹³ ASOF at para 16.

¹⁴ ASOF at para 18.

¹⁵ ASOF at para 19.

¹⁶ ASOF at para 20.

After she cooked dinner, she watered the plants, walked the dogs and then cleaned up the kitchen. Whilst she cleaned the kitchen, she took a knife beside the stove and sharpened it in preparation to threaten the deceased. She then realised there was a CCTV camera in the kitchen. Fearing her actions had been recorded, she placed the sharpened knife back at the stove.¹⁷

10 By about 8.00pm, Mr Seow, Andrew and Wei Yang left the house. Rowena and her two children had gone to the third floor of the house. Around this time, the accused ate her dinner and then went to the storeroom. She retrieved a long knife from a red pail in the storeroom and hid it inside her pants. She then instructed Don Hayati to watch over Mr Ong and to wait for her command to switch off the CCTV camera and lights.¹⁸

11 At around 8.32pm, the accused went up to the master bedroom on the second floor with the deceased's ironed pants and a basket of folded clothes. The long knife was concealed in the pants she carried. When she arrived at the master bedroom, she saw Mr Ong inside with the deceased, so she told Mr Ong that the water was already boiled for him to kill cockroaches to feed the birds in the aviary. Mr Ong left the master bedroom and went downstairs where Don Hayati was.¹⁹

12 The accused and the deceased then went into the wardrobe area of the master bedroom. The accused handed her the ironed pants, pulled out the long knife and pointed it at the deceased's neck, demanding her passport back. The deceased began to shout and struggle, and the accused became concerned that

¹⁷ ASOF at para 21.

¹⁸ ASOF at paras 22–23.

¹⁹ ASOF at para 24.

Mr Ong would hear her. The accused grabbed the deceased's t-shirt and dragged her into the master bedroom toilet.²⁰

13 Inside the toilet, the accused stabbed and slashed the deceased multiple times on the neck, head and face with the long knife and the short knife which she retrieved from under the sink, with the intention of causing bodily injury, namely multiple incised and stab wounds to the head and neck.²¹ The deceased subsequently went motionless and the accused realised that she was dead. By this time, Mr Ong had returned to the master bedroom and saw that the toilet door was shut. He called out to the deceased but did not receive a response. He then tried to open the door but found that it was locked, and then, worried that the deceased had fainted, he took a flashlight and screwdriver to open the door. He tried to peer into the toilet by looking through the gap between the floor and the bottom of the door, and when he saw there was blood on the floor, he used the screwdriver to open the toilet door from the outside.²²

14 When the accused heard Mr Ong, she armed herself with both knives. When Mr Ong opened the door, she stabbed him just below the neck. He then fended her off with his hands and the long knife dropped onto the floor. He then went to check on the deceased. Whilst he was doing so, the accused grabbed the long knife from the floor and stabbed him on the neck again. Eventually, Mr Ong overpowered the accused and dragged her out of the toilet towards the stairwell. When they reached the area near the pool table outside the master bedroom, Mr Ong shouted Rowena's name and called out for help. Don Hayati

²⁰ ASOF at para 25.

²¹ ASOF at para 26.

²² ASOF at paras 27–29.

came up the stairs from the first floor, but upon seeing them, she screamed and ran off.²³

15 Shortly after, Rowena came down the stairs from the third floor and saw Mr Ong and the accused. Mr Ong told her that the accused had killed the deceased, and asked for cable ties. He then brought the accused down to the first floor of the house. After Rowena gave him the cable ties, he tied the accused's hands and brought the accused to the main gate of the house. Three passers-by helped to watch over her while Mr Ong went back to the master bedroom toilet to check on the deceased. At about 8.48pm, Rowena called for an ambulance, and a message was forwarded to the police.²⁴

16 Paramedics and police arrived at the House. The paramedics pronounced the deceased dead at 9.03pm, thereafter attending to and conveying Mr Ong and the accused to Changi General Hospital by ambulance.²⁵

Cause of death

17 An autopsy was conducted on the deceased's body on 8 June 2016 by Dr Chan Shijia ("Dr Chan"), who subsequently produced a report dated 9 June 2016. The report documented at least 75 stab and incised wounds on the deceased's head and neck, and 19 incised and stab wounds on her left upper limb. Dr Chan's opinion was that the cause of death was due to the wounds on the deceased's head and neck which had led to a massive haemorrhage.²⁶

²³ ASOF at paras 30–32.

²⁴ ASOF at paras 33–35.

²⁵ ASOF at paras 36–41.

²⁶ ASOF at paras 42–43.

18 In a further clarificatory memorandum dated 31 March 2020, which was admitted into evidence by the consent of both parties,²⁷ Dr Chan confirmed that the multiple incised and stab wounds to the head and neck were sufficient in the ordinary course of nature to cause death.²⁸

The accused's statements

19 After her arrest and during investigations by the police, the accused made eight statements. They were as follows:

- (a) a statement recorded by Insp Mahathir Bin Mohamad on 8 June 2016, 2.35pm;
- (b) a statement recorded by ASP Ang Ghim Sing on 10 June 2016 at 1.20pm;
- (c) statements recorded by DSP Arun on 21 July 2016, 12pm; 22 July 2016, 4.45pm; 25 July 2016, 2pm and 4.10pm; and 26 July 2016, 3.40pm and 4.20pm.

20 Initially the accused submitted that the first statement was vitiated by oppression, while conceding the remaining statements were voluntary. After an ancillary hearing, I concluded that the first statement was voluntary and admitted all the statements into evidence. Subsequently in the context of the ASOF, the accused agreed that all her statements were voluntary and were accurately recorded and interpreted.²⁹

²⁷ ASOF at para 48.

²⁸ ASOF at para 47.

²⁹ ASOF at para 53.

Legal context

21 The amended charge was framed under s 300(c) of the Penal Code, which provides:

300. Except in the cases hereinafter excepted culpable homicide is murder —

...

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; ...

22 Culpable homicide is defined under s 299 of the Penal Code:

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

23 The accused relied on the partial defence of diminished responsibility, under Exception 7 to s 300 of the Penal Code, which at the material time read:

Exception 7. — Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

24 The accused bore the burden of establishing the defence on the balance of probabilities: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 (“*Iskandar*”) at [66]. If she was able to do so, a conviction under the lesser charge of culpable homicide not amounting to murder would follow. I deal with this issue first.

Diminished responsibility

The defence's case on diminished responsibility

25 The defence case rested on Dr Tan's report that the accused was suffering from persistent depressive disorder with intermittent major depressive episodes of moderate severity, in line with the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5").³⁰ In his opinion, this led to her lacking control,³¹ substantially impairing her mental responsibility during the murder of the deceased, thus establishing the defence.

Accused's testimony

26 The accused testified that she had been raped and sexually assaulted by her brother when she was between 14 and 15 years old. According to her, there were over ten incidents, which had occurred over one year, and she had not informed anyone because her brother had threatened her and had been violent with her before.³² She testified that to vent her frustrations, she would often cry and hit a wall.³³ While in Indonesia, she had two different relationships with other women. The first was a woman known as "Desi" whom she was in a homosexual relationship with when she first worked at a prawn factory.³⁴ Later when she was at a training centre for maids in Indonesia, she made many friends, including a woman known as "Indah". According to the accused, they were very close and also entered a homosexual relationship until Indah was sent to Hong

³⁰ Exhibit D2 at p 6; NEs 8 February 2021, p 77 lines 22–24.

³¹ NEs 9 February 2021, p 11 lines 17–24.

³² NEs 6 October 2020, p 10 lines 1–27.

³³ NEs 6 October 2020, p 10 line 31.

³⁴ NEs 6 October 2020, p 11 lines 20–21; p 12 lines 16–24.

Kong to work, and the accused went to Singapore. At this point, the two lost contact.³⁵

27 The accused testified that she was extremely lonely in Singapore.³⁶ According to her, during the first two months of her employment, she was told that she would not receive any part of her salary until she had finished 8 months of work,³⁷ there was no form of entertainment,³⁸ and she was only allowed to go outside to walk the dogs.³⁹ She explained that her employer had not allowed her to keep a handphone, and thus she was unable to call anyone.⁴⁰ She also testified that she was not close to the other maid in the house, Don Hayati, because Don Hayati was employed by Rowena and would often follow Rowena out.⁴¹ She stated that she was only able to call her mother for the first time one month after she had arrived in Singapore.⁴² The accused then went on to testify about how she was unable to contact her family and Indah. She explained that after her first call to her mother, a few days later, she tried calling her again, but was unable to reach her. This led to her becoming worried as she thought something had happened to her father.⁴³ She also wanted to talk to “Indah” because they were very close but was unable to call her.⁴⁴

³⁵ NEs 6 October 2020, p 13 lines 3–23.

³⁶ NEs 6 October 2020, p 13 line 3–26.

³⁷ NEs 6 October 2020, p 14 lines 30–31.

³⁸ NEs 6 October 2020, p 19 lines 19–20.

³⁹ NEs 6 October 2020, p 15 lines 15–18.

⁴⁰ NEs 6 October 2020, p 17 lines 12–16.

⁴¹ NEs 6 October 2020, p 18 lines 20–26.

⁴² NEs 6 October 2020, p 17 lines 18–23.

⁴³ NEs 6 October 2020, p 17 lines 18–32.

⁴⁴ NEs 6 October 2020, p 18 lines 10–19.

28 The accused gave evidence on why she had confronted the deceased on 7 June 2016. The accused explained that because she was missing her family and worrying about them, she asked the deceased if she could go back to Indonesia.⁴⁵ The deceased denied her request, and the accused testified that she felt disappointed and angry due to this.⁴⁶ The accused then asked the deceased again a few days later,⁴⁷ and was once again told she could not, and thus felt angry and upset.⁴⁸ Furthermore, she testified that she could not go back even if she wanted to as the deceased had her passport. Thus, she planned to get her passport by frightening the deceased with a knife.⁴⁹

29 Regarding her diary entry dated 12 May 2016 (see [6] above), the accused explained that the word “death” meant that she was ready to die to carry out her plan.⁵⁰ She also gave evidence that she was prepared to risk her life to such an extent because she missed her parents, and what her older brother had done to her as was playing on her mind, causing her nightmares.⁵¹

30 On her state of mind at the time of the offence, the accused stated that she did not have an intention to kill the deceased,⁵² and that she was very angry at the time. The accused explained that because of this, she was not her usual self and did not remember how many times she had stabbed the deceased,⁵³ and

⁴⁵ NEs 6 October 2020, p 19 lines 23–29.

⁴⁶ NEs 6 October 2020, p 20 line 2.

⁴⁷ NEs 6 October 2020, p 21 line 13–17.

⁴⁸ NEs 6 October 2020, p 22 line 12–13.

⁴⁹ NEs 6 October 2020, p 22 lines 14–24.

⁵⁰ NEs 6 October 2020, p 23 line 8–12.

⁵¹ NEs 6 October 2020, p 23 lines 16–24.

⁵² NEs 6 October 2020, p 28 line 6.

⁵³ NEs 6 October 2020, p 28 lines 11–17.

she was unable to control her hands.⁵⁴ She explained that if she had intended to kill the deceased, she would not have inflicted so many wounds. Instead she would have stabbed her once or twice in the heart area.⁵⁵ When asked why she had hidden knives in the toilet, she explained that she had just wanted to frighten the deceased.⁵⁶

31 The accused also gave evidence regarding her interactions with the two psychiatrists, Dr Sarkar and Dr Tan. Specifically, she testified as to why she had been more open with Dr Tan as opposed to Dr Sarkar. She explained that when she was interviewed by Dr Sarkar on 24 June, 28 June and 5 July 2016, she was afraid to reveal everything as she did not know him well enough.⁵⁷ She also said that she was unable to focus to answer his questions due to the injuries she sustained on 7 June 2016.⁵⁸ She then testified that, on the other hand, she had been more open with Dr Tan during their interviews on 10 September, 11 September and 22 October 2019 because he was friendlier and she was no longer in any pain from her wounds.⁵⁹

Dr Tan's report

32 Dr Tan's report dated 22 November 2019 was based on examinations of the accused in September and October 2019, as well as interviews with her mother, sister and Don Hayati.⁶⁰ In his opinion, the accused's first major

⁵⁴ NEs 6 October 2020, p 40 lines 12–20.

⁵⁵ NEs 6 October 2020, p 39 lines 1–4.

⁵⁶ NEs 6 October 2020, p 39 lines 5–17.

⁵⁷ NEs 6 October 2020, p 32 lines 1–10.

⁵⁸ NEs 6 October 2020, p 32 lines 14–31.

⁵⁹ NEs 6 October 2020, p 34 lines 18–27.

⁶⁰ Exhibit D2 at p 1.

depressive episode occurred when she was between 14 and 15 years old, after her brother's rapes, and was characterised by depressed mood, insomnia, loss of appetite, low self-esteem and a fear of going home and meeting her brother.⁶¹ She suffered a relapse of a major depressive episode after she came to Singapore. This was "persistent depressive disorder with intermittent depressive disorder, current episode moderate severity".⁶² Dr Tan's opinion was based on the accused reporting the following symptoms whilst she had been under the employment of the deceased:⁶³ (a) depressed mood; (b) lower appetite; (c) weight loss; (d) difficulty sleeping at night; (e) lethargic during the day; (f) thoughts in her head such as missing her girlfriend and her mother and not wanting to work in Singapore; and (g) thoughts of dying and suicide. Finally, the report renders an opinion that the accused had continued to suffer this disorder at the time of the offence and that this had substantially impaired her mental responsibility for causing the death of the deceased.⁶⁴

Prosecution's case on diminished responsibility

33 The Prosecution's case was that the accused was not labouring under any disease that caused an abnormality of mind. In particular, she did not suffer from persistent depressive disorder prior to coming to Singapore,⁶⁵ and did not suffer from persistent depressive disorder with intermittent major depressive disorder in the period leading up to the murder and at the time of the murder itself.⁶⁶

⁶¹ Exhibit D2 at p 6.

⁶² Exhibit D2 at p 7.

⁶³ Exhibit D2 at p 7.

⁶⁴ Exhibit D2 at p 8.

⁶⁵ PWS at para 65.

⁶⁶ PWS at paras 66–68.

34 The Prosecution relied on the accused's statements and evidence adduced through other witnesses in trial. Dr Sarkar furnished three reports contradicting Dr Tan's position. The first report, dated 15 July 2016, was based on interviews with the accused on 24 and 28 June and 5 July 2016, a review of her prison medical history and phone conversations with third parties such as Mr Ong, Wei Yang and Don Hayati.⁶⁷ The opinion expressed in the report was that the accused had been suffering from adjustment disorder as per *ICD-10: international statistical classification of diseases and related health problems: tenth revision* (World Health Organisation, 2nd Ed, 2014) ("ICD-10") in the two weeks leading up to the offence; however, this was not a major mental disorder, and would not have been likely to cause "a substantial impairment of her judgment, ability to think rationally or impulse control" at the time of the offence.⁶⁸ This was augmented by a second report dated 27 May 2019 that dealt with new material that arose from investigations, such as the accused's diary.⁶⁹ In this report, Dr Sarkar noted based on the diary that although she felt sad, anxious, frustrated and homesick shortly after arriving in Singapore, by 27 April 2016, there was significant improvement in her mood and by 12 May 2016, the accused had also started planning and strategizing.⁷⁰ This report noted that the accused did not appear to be suffering from an adjustment disorder or any abnormality of mind,⁷¹ and attributed the cause to the accused's own personality, rather than adjustment disorder.⁷²

⁶⁷ Exhibit P699 at p 1.

⁶⁸ Exhibit P699 at p 9.

⁶⁹ Exhibit P967 at p 2; NEs 21 August 2019, p 20 lines 25–29.

⁷⁰ NEs, 21 August 2019, p 32 lines 27–32; Exhibit P967 at pp 7–9.

⁷¹ Exhibit P967 at pp 8–9.

⁷² Exhibit P967 at p 9.

35 Dr Sarkar’s third report dated 15 January 2021 was tendered in answer to Dr Tan’s report and premised on DSM-5, the standard used by Dr Tan in his diagnosis.⁷³ His conclusion was that Dr Tan’s report was not supported by objective evidence or the accused’s testimony in court. There was no indication of functional impairment of the accused, as she was able to find work, finish school and make friends in Indonesia.⁷⁴ The report noted that there was objective evidence that the accused was eating normally; had not lost much weight;⁷⁵ and was able to make friends.⁷⁶

Analysis on diminished responsibility

36 In order to rely on Exception 7, the accused must prove the following (*Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 (“*Nagaenthran*”) at [21]):

- (a) first, that she was suffering from an abnormality of mind (“the first limb”);
- (b) second, that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury (“the second limb”); and
- (c) the abnormality of mind substantially impaired her mental responsibility for her acts and omissions in relation to the offence (“the third limb”).

⁷³ Exhibit P973 at pp 1–3.

⁷⁴ Exhibit P973 at pp 9–12.

⁷⁵ Exhibit P973 at p 13.

⁷⁶ Exhibit P973 at pp 13–15.

37 I deal first with the relationship between the three limbs. The written submission of the Defence was that the first limb is a matter “largely to be determined based on expert evidence”,⁷⁷ citing the Court of Appeal decision of *Nagaenthran*. I reproduce the relevant paragraph of *Nagaenthran* here:

22 We have stated in *Iskandar* (at [80]), that *whilst the second limb (otherwise known as the aetiology or root cause of the abnormality) is a matter largely to be determined based on expert evidence, this is not the case with the first and third limbs, which are to be determined by the trial judge as matters of fact* (see also, the decisions of this court in *Chua Hua Soon Jimmy v PP* [1998] 1 SLR(R) 601 (“*Chua Jimmy*”) at [21], *Zailani bin Ahmad v PP* [2005] 1 SLR(R) 356 at [51] and *Ong Pang Siew* at [59]; and the decision of the High Court in *PP v Juminem* [2005] 4 SLR(R) 536 (“*Juminem*”) at [5]).

[emphasis added]

38 *Nagaenthran* therefore said the opposite. At the oral response, I clarified and defence counsel agreed, that *it is only the second element* of diminished responsibility, *ie*, the root cause of the abnormality of mind, that is largely a matter for expert evidence: see *Iskandar* at [80]. For the first element, whilst medical opinion is useful in proving that there was an abnormality of mind, it will not be dispositive. A verdict that there is an abnormality of mind must be founded on all the evidence available, including medical opinion and the circumstances of the case: *Nagaenthran* at [28] and [29].

39 The three limbs are related, nonetheless. In the present case the Defence relied upon the depressive disorder as the cause of the abnormality of mind and the reason for impairment of mental responsibility. The Prosecution, on its part, submitted that there was neither any abnormality of mind nor, in the light of the medical evidence, any disease, and was therefore of the view that there was no impairment of mental responsibility. Whether the accused had a persistent

⁷⁷ DWS at para 282.

depressive disorder with intermittent depressive episodes was therefore fundamental to all three issues in this particular case, and I deal with this issue before analysing the three specific limbs.

Did the accused have a persistent depressive disorder with intermittent major depressive episodes?

40 Dr Tan's evidence and Dr Sarkar's evidence were at odds as to whether the accused had a depressive disorder. Dr Sarkar was of the view that the accused did not exhibit the symptoms required for the disorder, while Dr Tan's conclusion was to the contrary.

41 A fundamental concern was that Dr Tan's analysis lacked factual substratum. *Anita Damu v Public Prosecutor* [2020] 3 SLR 825 at [30] makes it clear that the expert opinion should have a proven factual basis. At [31]–[32] Sundaresh Menon CJ stressed that in evaluating expert opinion, the court's task is to scrutinise the *underlying facts* that form the basis of such an opinion:

31 ... since the court is ultimately tasked with evaluating the expert opinion, the premise on which the expert's conclusions are drawn must necessarily be before the court so as to allow the court to ascertain whether the expert's conclusions are properly founded ...

32 In the context of psychiatric evidence, where there is a substantial dispute over the truth of an accused person's account of the events, which has been conveyed to the psychiatrist, the basis rule would generally require that the accused person testify before the court as to the relevant factual basis. Only then can the psychiatrist's opinion be properly assessed. ...

42 Dr Tan's report was based on the accused's self-reported symptoms to him during the interview. There were no independent facts corroborating the symptoms that Dr Tan's report relied upon, being depressed mood, loss of appetite and weight and suicidal thoughts.

43 I start with depressed mood, which is a key symptom for DSM-5 depressive disorders.⁷⁸ In his testimony, Dr Sarkar stressed the importance of this symptom for both persistent depressive disorder⁷⁹ and major depressive disorder.⁸⁰ Both experts agreed that the accused did report feeling sad and she would have had good reasons to be sad.⁸¹ They also agreed that sadness itself does not necessarily mean depressed mood: there must be functional impairment.⁸² There was no evidence of functional impairment. First, the observations of third parties, as reported to both experts, did not evince any functional impairment. Dr Sarkar had interviewed Mr Ong and Wei Yang, and both he and Dr Tan had interviewed Don Hayati. All three had not observed any changes in the accused's moods, nor had they observed any change in her work performance.⁸³ Second, from the accused's own perspective, it appears as though there was no functional impairment during her time in Indonesia or in Singapore. Under cross-examination, the accused stated that she had been able to pass all her subjects at school, she worked at a prawn factory where she was happy,⁸⁴ she had attended a training program that she was able to complete and make friends at,⁸⁵ and she had been able to converse with and befriend a Bangladeshi worker and another Indonesian maid in Singapore.⁸⁶ Finally, the

⁷⁸ Exhibit D2 at pp 6–7.

⁷⁹ NEs 10 February 2021, p 10 line 20 to p 11 line 11.

⁸⁰ NEs 10 February 2021, p 12 lines 12–19.

⁸¹ NEs 9 February 2021, p 72 lines 11–13; NEs 10 February 2021, p 84 lines 10–14.

⁸² NEs 9 February 2021, p 24 lines 1–28; NEs 10 February p 14 line 24 to p 17 line 26.

⁸³ NEs 21 August 2019 p 23 line 17 to p 24 line 6; NEs 9 February 2021, p 73 line 22 to p 74 line 14.

⁸⁴ NEs 7 October 2020, p 16 line 13 to line 23; p 19 lines 9–13.

⁸⁵ NEs 7 October 2020, p 22 line 28 to p 23 line 16.

⁸⁶ NEs 7 October 2020, p 12 line 6 to p 14 line 7.

accused's plan to steal money and retrieve her passport from the deceased shows a capacity to think and plan.

44 Associated with this was the accused's evidence about her nightmares. The accused had testified that after her brother allegedly raped her, she began to have nightmares about her ordeal. She testified that she would usually be happy unless she had a nightmare the night before.⁸⁷ She had also reported her nightmares to Dr Tan, as seen in his report.⁸⁸ In cross-examination, the accused admitted that she had not told anyone about her nightmares until she had been interviewed by Dr Tan in 2019.⁸⁹ This belies her reports that these nightmares had been persistent, occurring since she was 14 or 15 years of age after she had been raped,⁹⁰ and persisting all the way through to her work at the prawn factory,⁹¹ to her arrival in Singapore⁹² and to her time in prison.⁹³ While the defence case alluded to her being shy with Dr Sarkar, she did tell Dr Sarkar about the rapes, which she would have even more reason to be shy about. Furthermore, the nightmares would have been integrally related to her recount of the rapes, and it would seem likely that having told Dr Sarkar about the rapes, she would have gone on to tell him about the associated nightmares.

45 Dr Tan also cited weight loss and loss of appetite as a symptom of the accused's mental disorders.⁹⁴ The objective evidence did not reflect such

⁸⁷ NEs 7 October 2020, p 19 lines 9–24.

⁸⁸ Exhibit D2 at p 4.

⁸⁹ NEs 7 October 2020, p 47 line 19 to p 48 line 3.

⁹⁰ NEs 7 October 2020, p 20 lines 30–31.

⁹¹ NEs 7 October 2020, p 19 lines 12–19.

⁹² NEs 6 October 2020, p 23 lines 20–24.

⁹³ NEs 7 October 2020, p 29 lines 26–28.

⁹⁴ Exhibit D2 at p 7.

symptoms. The accused's weight loss, if any, was too marginal to be considered. She weighed around 65 kg when she arrived in Singapore as per the employment agency's biodata, and her weight when she was assessed after the murder was 64.5 kg.⁹⁵ As pointed out by Dr Sarkar, the criteria for the depressive disorders required a severe and substantial loss of weight,⁹⁶ yet this was not the case for the accused, a point that was accepted by Dr Tan.⁹⁷ Furthermore, there were no collateral sources corroborating the accused's loss of appetite. Neither Mr Ong nor Don Hayati had noticed any change in appetite. In fact, in Dr Tan's own report, he noted that the accused had reported that her "appetite was unchanged".⁹⁸ Thus, it is clear in this case that this particular symptom relied upon by Dr Tan is not sustainable based on collateral sources, and indeed, even on his own report.

46 Finally, I come to the last symptom relied upon by Dr Tan, that of suicidal thoughts. In Dr Tan's report, he stated that the accused had suicidal thoughts when the deceased had refused to let her go home,⁹⁹ and this was considered by Dr Tan as a symptom of her relapse of her depressive disorders when she was in Singapore.¹⁰⁰ However, under cross-examination, the accused had admitted that she did not feel suicidal, rather she had been willing to die to try and go back home.¹⁰¹ Whilst Dr Tan had attempted to explain that there was

⁹⁵ ASOF at para 6.

⁹⁶ NEs 10 February 2021, p 18 line 29 to p 20 line 27.

⁹⁷ NEs 9 February 2021, p 78 lines 19–25.

⁹⁸ Exhibit D2 at p 5.

⁹⁹ Exhibit D2 at p 5.

¹⁰⁰ Exhibit D2 at p 7.

¹⁰¹ NEs 7 October 2020, p 56 lines 3–22.

not a difference between these two,¹⁰² he also admitted that her testimony in court was inconsistent with what she had told him.¹⁰³

47 Dr Tan himself recognised the lack of factual basis to his diagnosis:¹⁰⁴

Q So if you take her version in Court---

A Yes.

Q ---let's say you hear this is the version she gave to you at the time when you interview her, she gives you this version that she gave us in Court---

A Yes.

Q ---where she has sworn to tell the truth.

A Mm.

Q She gave this version to you. Will you make a finding of major depressive disorder?

A *Less likely*. Okay.

Q Good.

A I'll be fair; it'll be *less likely*.

Q That is fair.

A Yah.

[Emphasis added]

48 Dr Tan also conceded that the strict criteria under DSM-5 was not satisfied. He explained instead that it was not to be used in a “cookbook” manner,¹⁰⁵ testifying “[w]hen we do that [*ie*, use it as a “cookbook”], it’s only for research, alright. But as a forensic psychiatrist and/or as a psychiatrist, we try as much as possible to satisfy as much of the guidelines as possible ... And,

¹⁰² NEs 9 February p 79 lines 17–21.

¹⁰³ NEs 9 February p 79 lines 1–15.

¹⁰⁴ NEs 9 February 2021, p 80 line 14 to p 81 line 14.

¹⁰⁵ NEs 9 February 2021, p 41 lines 20–23.

of course, we use a lot of clinical judgment as well.”¹⁰⁶ Dr Sarkar agreed that it was sometimes necessary to use clinical judgment, but caveated that a psychiatrist would only use such judgment when symptoms are persistent, valid and severe,¹⁰⁷ and as such when symptoms are not persistent or severe, there should be a reliance on stringent criteria to avoid ungrounded speculation.¹⁰⁸ In my view, clinical judgment, too, must rest on sound reasons. The point of expert evidence is to provide scientific and technical expertise to the court. If clinical judgment is accepted without medical analysis and explanation, such an approach would detract from the purpose of expert evidence.

49 Thus, I preferred Dr Sarkar’s opinion that the accused was not suffering from any depressive disorder at the time of the offence.

50 I turn then to analyse the evidence relevant to the three limbs.

Cause of abnormality of mind

51 I deal first with the second limb as it is concerned with the aetiology of the abnormality (see *Iskandar* at [80]) and follows closely upon the medical evidence. Dr Tan’s evidence did not pinpoint with specificity which of the three causes listed in the second limb caused the abnormality. His report could be read to suggest that the abnormality was induced by the disease of the diagnosed disorder. This disorder in turn was induced initially by injury through the repeated rapes by the accused’s elder brother, and then later by recurrence of disease, in the relapse suffered in Singapore.¹⁰⁹ In any event, as I found that the

¹⁰⁶ NEs 9 February 2021, p 161 lines 20–31.

¹⁰⁷ NEs 10 February 2021, p 35 lines 23–25.

¹⁰⁸ NEs 10 February 2021, p 36 lines 6–20.

¹⁰⁹ Exhibit D2 at pp 6–7.

accused was not suffering from persistent depressive disorder with intermittent major depressive episodes, the issue of its specific cause did not arise.

Abnormality of mind

52 The first limb requires that the accused must have been labouring under an “abnormality of mind” at the time of committing the murder. An “abnormality of mind” was defined in *R v Byrne* [1960] 2 QB 396 (“*Byrne*”) at 403 as follows:

[A] state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind’s activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment.

53 This definition was adopted by the Court of Appeal in *Iskandar* at [81]. When examining whether the accused was suffering from an “abnormality of mind” the court may consider whether the accused had an abnormally reduced mental capacity to (a) understand events; (b) judge the rightness or wrongness of one’s actions; or (c) exercise self-control: *Iskandar* at [82]. *Nagaenthran* further made clear (at [25]) that these are not exhaustive factors but a helpful guide to the inquiry and are likely to be the most relevant and often used tools. A verdict that there is an abnormality of mind must be founded on all the evidence available, including medical opinion: *Nagaenthran* at [28]. Thus, the surrounding circumstances of the case, including the accused’s conduct prior to, during and after the offence will be relevant: *Nagaenthran* at [29].

(1) Indications from surrounding circumstances

54 The surrounding circumstances showed that the accused did not have any reduced capacity to understand events, judge the wrongness of her actions or exercise self-control. Don Hayati, Mr Ong and other members of the family gave evidence on her ability to do her work and to eat and sleep normally. The accused also showed evidence of the ability to plan and think through alternatives. She planned how to obtain her passport and money and recruited Don Hayati's assistance. There was planning undertaken in respect of the concealment of various knives and a hammer around the home at locations that could come in useful. On 7 June 2016, the material date, she exhibited quickness of thought in how she began and continued the attack on the deceased in the wardrobe area and the toilet. When the long knife became slippery with blood, she retrieved the short knife, but finding it too small, she washed the long knife in order to use it again. She anticipated Mr Ong's entry into the toilet and attacked him on entry.

55 The accused's comprehension of events as they unfolded and her recollection of them were also clear from her statements to the police. For example, in her statement on 21 July 2016, she was able to remember which hand she had used to drag the deceased and what side of the deceased she attacked. She was able to remember the use of retrieval of the short knife and washing the long knife. She was also able to remember her feelings of fear upon hearing Mr Ong,¹¹⁰ which demonstrates that she knew what she had done was wrong.

¹¹⁰ Exhibit P707 at pp 6–7.

(2) Expert evidence

56 The medical evidence was assessed in the context of the surrounding circumstances as well as the accused’s evidence on the stand. The mainstay of the defence argument of diminished responsibility was the fact that there were more than 75 stab wounds. This was characterised by the defence as a highly emotional, frenzied attack, indicating that the accused was suffering from an abnormally reduced capacity to control herself.¹¹¹ The accused, when on the stand, maintained that she could not control her hands.¹¹²

57 Dr Sarkar disagreed that the attack was frenzied. Dr Sarkar’s observation was that the wounds were concentrated on the specific area of the head and neck,¹¹³ where maximum damage could be inflicted on a person. In his opinion, she was not “randomly striking out”: if the accused had lost control, a more scattered and random spread of injuries would have been caused.¹¹⁴ Dr Sarkar opined that there was no loss of impulse control because the accused knew she knew she was stabbing the deceased; it was just the number of times that she did not remember. She did not have amnesia regarding the incident as she could describe in detail the sequence of events and was exercising judgment as events unfolded.¹¹⁵ This was characterised by Dr Sarkar not as amnesia but as the accused being so emotional that she could no longer think clearly.¹¹⁶ This was due to rage that arose from her plan being thwarted, and not a disordered state of mind. Her rage, which was intense at the point she was stabbing the

¹¹¹ DWS at paras 244, 275.

¹¹² NEs 8 October 2020, p 15 lines 1–20.

¹¹³ NEs 22 August 2019, p 36 line 18 to p 37 line 31.

¹¹⁴ NEs 10 February 2021 p 46 lines 15–28.

¹¹⁵ NEs 21 August 2019, p 41, line 31 to p 42 line 23.

¹¹⁶ NEs 22 August 2019, p 43, lines 15–20, p 46 lines 2–8.

deceased,¹¹⁷ could be explained by the frustration and anger she felt in circumstances leading up to the event, and the event as it unfolded.¹¹⁸ The high number of wounds is explained by the accused's anger towards the deceased for denying her the chance to go home, as well as her anger at having her plan foiled.¹¹⁹ Dr Sarkar also noted that the accused could explain that her emotion shifted from being angry to being fearful when Mr Ong knocked on the toilet door. Her ability to monitor her internal mental state as events unfolded was not consistent with a person with an abnormally reduced capacity to control herself.¹²⁰

58 Dr Sarkar's opinion sat well with the accused's evidence which was given in court. She said she could not control herself because "I was in a very angry state".¹²¹ While she could not recall how many times she stabbed the deceased, she remembered stabbing the deceased, and getting on top of the deceased to continue stabbing her. She specifically recalled that she used the small knife to stab the back of the deceased's neck, rather than the back of her head, and explained she did so, "[b]ecause Madam had hit me, that's why I got even angrier".¹²² She also expanded: "I was very angry. I was feeling empty because I couldn't go back".¹²³ While she insisted that she could not control her hands, she also explained that she was "being emotional, very angry".¹²⁴ Thus,

¹¹⁷ NEs 6 October 2020, p 28 lines 11–13.

¹¹⁸ NEs 21 August 2019, p 45 lines 12–25.

¹¹⁹ NEs 22 August 2019, p 59 line 1 to p 60 line 2.

¹²⁰ NEs, 21 August 2019, p 39, lines 5–20.

¹²¹ NEs 8 October 2020, p 15 lines 1–6.

¹²² NEs 8 October 2020, p 23 line 27 to p 24 line 1; p 26 lines 28–29.

¹²³ NEs 8 October 2020, p 26 line 17.

¹²⁴ NEs 8 October 2020, p 27 lines 1–2.

it even if it is accepted that she had lost control, she did not suffer from an *abnormally reduced ability* to control herself. In her own words, she had “lost control” because she was angry. This is not sufficient to meet the requirements of the defence.

59 While Dr Tan’s report was of the contrary view, when he was cross-examined, Dr Tan agreed that the accused was able to reason and plan, conceding:¹²⁵

- Q Isn’t that---doesn’t that show she was able to reason, she was able to plan, and she was able to even form escape [routes] and all, shows a lot of reasoning?
- A Yah, it’s logical planning, yah, I agree.
- Q So you are not denying that she’s---
- A Yah, I’m not denying that, of course.

Mental responsibility

60 Regarding the third limb, substantial impairment of her mental responsibility as a result of her abnormality of mind must be proved. The question of substantial impairment is a question of fact to be answered by the court: *Iskandar* at [80]. The court is concerned with the connection between the accused’s abnormality of mind and her mental responsibility for the murder of the deceased, which is largely a question of fact that requires a real and material impairment of the mental state, *ie*, the abnormality of mind must have influenced the offender’s actions: see *Nagaenthran* at [33]. As I ruled that there was no abnormality of mind, this question no longer arose. The facts showed that the accused was not functionally impaired. She clearly understood the nature of her acts and did not lose her sense of judgment of the rightness or

¹²⁵ NEs 9 February 2021, p 136 lines 12–16.

wrongness of what she was doing. The fact that she understood that what she was doing was wrong clearly demonstrates that her mental responsibility could not have been substantially impaired.

Conclusion on diminished responsibility

61 I found that that the accused was unable to prove on the balance of probabilities that Exception 7 of s 300 of the Penal Code was applicable.

Charge under s 300(c) of the Penal Code

62 Returning then to the charge under s 300(c) of the Penal Code, the onus was on the Prosecution to prove the following elements beyond reasonable doubt: (a) that death has been caused by the acts of the accused; (b) that the bodily injury inflicted is in the ordinary course of nature sufficient to cause death; and (c) that the act resulting in bodily injury was done with the intention of causing that bodily injury to the accused: *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 (“*Wang Wenfeng*”) at [32].

Death caused by injuries in the ordinary course of nature sufficient to cause death

63 The first two elements, that death was caused by the injuries and that the injuries were in the ordinary course of nature sufficient to cause death, were satisfied by the evidence of the forensic pathologist, Dr Chan.

Intention to cause the s 300(c) injuries

64 The ASOF records that the accused was prepared to kill the deceased if the latter refused to comply with her demands;¹²⁶ and that while in the toilet, she

¹²⁶ ASOF para 13.

stabbed the deceased multiple times with the intention of causing multiple incised and stab wounds to the head and neck.¹²⁷ These were premised upon the accused's statements to like effect to DSP Arun also recorded on 22 July 2016 at 4.45pm,¹²⁸ and 21 July 2016 at 12pm.¹²⁹ At closing oral submissions, the Defence and the Prosecution reiterated that, save for the defence of diminished responsibility, the Defence accepted that the accused had intention to cause these injuries.¹³⁰

65 At trial, the accused's contention was that she had no intention to kill and could not control her hands. Dr Sarkar's perspective on this aspect of her evidence is dealt with at [57]–[58] above. In my view, her contentions at trial were not substantiated. From the context it was clear that in the lead up to the offence, the accused was prepared to kill if she had to do so in order to execute her plan to escape with her passport and money. She had planted many knives around the house to ensure that she could execute her plan. When the deceased put up a struggle, the accused, in keeping with her earlier plans, inflicted the various wounds and took quick action to achieve her objective. Her capacity to form, act and carry out her intention was dealt with at [54].

66 In the light of the evidence, I found that the Prosecution had proved beyond reasonable doubt that the accused did cause and intend to cause the bodily injuries suffered by the deceased in this case. I therefore convicted the accused of the charge as framed under s 300(c) of the Penal Code.

¹²⁷ ASOF para 26.

¹²⁸ Exhibit P708 at p 11 and 14.

¹²⁹ Exhibit P707 at pp 6–7.

¹³⁰ NEs 23 April 2021 at p 48 lines 9–32.

Sentence

67 Section 302(2) of the Penal Code afforded a discretion to impose a term of life imprisonment or death for the accused. The Court of Appeal considered the issue of the discretionary death penalty in *Chan Lie San v Public Prosecutor* [2019] 2 SLR 439 (“*Chan Lie San*”). 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 *Chan Lie San* at [84].

68 The Prosecution did not seek the death penalty. I was of the view that the particular and unique circumstances of the case did not outrage the feelings of the community. The accused was young (it was disputed whether she was 21 or 23 at the time of the offence) and had not an extensive experience outside of her village prior to her departure, save in the protected environments of a prawn factory and then a training centre. She had felt compelled by familial financial strain and filial duty to her parents to leave Indonesia. It was not disputed that she had been a victim of rape by her elder brother as a teenager in Indonesia; in Singapore she experienced bouts of sadness, loneliness and homesickness. The specific nature of the incident did not reflect a cold and calculated killing, but rather, intense panic and distress in executing her plan to return home. I therefore exercised my discretion to impose a term of life imprisonment.

69 The life term was backdated to the date she was first remanded, 9 June 2016. Leave was granted under s 147 of the CPC to withdraw the previously stood down charge of attempted murder in respect of Mr Ong.

Valerie Thean
Judge of the High Court

Wong Kok Weng, Lim Shin Hui and Phoebe Tan (Attorney-
General's Chambers) for the prosecution;
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