Public Prosecutor v Sundarti Supriyanto
[2004] SGHC 212

Case Number : CC 19/2003

Decision Date : 24 September 2004

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Jaswant Singh, Eugene Lee, Aaron Lee and Adrian Yeo (Deputy Public Prosecutors) for Prosecution; Muhamed Muzammil bin Mohd (Muzammil Nizam and Partners) and Johan Ismail (Johan Ismail and Co) for accused

Parties : Public Prosecutor — Sundarti Supriyanto

Criminal Law – Offences – Culpable homicide – Accused found guilty of killing deceased but exception of provocation made out – Whether charge of murder should be reduced to one of culpable homicide not amounting to murder – Whether accused should be convicted on reduced charge – Section 304(a) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Murder – Interpretation of s 300(c) Penal Code – Elements of offence under s 300(c) Penal Code (Cap 224, 1985 Rev Ed) – Whether Prosecution proved accused committed offence under s 300(c) Penal Code (Cap 224, 1985 Rev Ed) – Section 300(c) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Exceeding private defence – Accused claiming deceased attacked her with knife therefore entitling her to exercise right of private defence – Whether accused had extending right of private defence – Section 300 Exception 2 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Provocation – Accused claiming deceased abused her – Whether abuse suffered by accused resulting in loss of self-control – Whether provocation by deceased "grave and sudden" – Section 300 Exception 1 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Sudden fight – Whether sudden fight had broken out between accused and deceased – Whether accused's acts satisfying proportionality requirement of sudden fight exception – Section 300 Exception 4 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Statements – Accused giving contradictory versions of event to police officers and in court – Whether accused's initial version should be thrown out as false – Whether accused's false statements out of court should be used at her trial to corroborate guilt

24 September 2004 *Judgment reserved.*

MPH Rubin J:

Background

1 The accused, Sundarti Supriyanto, is a 23-year-old female Indonesian working as a domestic maid in Singapore. She was tried before me on a charge of murder by causing the death of her female employer ("the deceased"), on 28 May 2002 between 8.00pm and 10.41pm at Block 165 Bukit Merah Central #06-3661/3663. At the end of the trial, I reserved my judgment. I have now come to the decision to convict the accused on a reduced charge of culpable homicide not amounting to murder. I give my reasons.

Facts

2 On 28 May 2002, at about 10.41pm, a fire was reported at Block 165 Bukit Merah Central. Officers from the Singapore Civil Defence Force ("SCDF") and the police were immediately despatched to the scene.

Discovery of the bodies

3 SCDF Second Warrant Officer Jumahat bin Bakri ("WO2 Jumahat"), the officer-in-charge of Pump Ladder 012, arrived at the scene with his section at 10.49pm. He rushed up to the location of the fire with SCDF Lance Corporal Arif bin Amat ("LCP Arif"). WO2 Jumahat entered the unit to search for casualties. There, he observed that #06-3663 was connected internally to unit #06-3661. At the rear of unit #06-3661, WO2 Jumahat discovered the body of the deceased, lying motionless in a supine position on the floor in a corridor. With the assistance of LCP Arif, WO2 Jumahat carried the body of the deceased out to the common corridor. Two SCDF ambulance officers attended to the deceased, but failed to revive her; she was pronounced dead at 11.30pm.

4 At 11.33pm, SCDF first warrant officer Abdul Razak Senin ("WO1 Razak"), the officer-in-charge of Pump Ladder 011, arrived at the scene with his section. WO2 Jumahat briefed WO1 Razak on the situation, following which WO1 Razak entered the fire-affected units to assist in the search for other casualties. While searching the corridor towards the rear of unit #06-3661, he discovered a closed door leading to the toilet and kitchen. When he opened the door, he found the body of a girl, the deceased's three-year-old daughter ("Crystal"), also lying motionless on the floor in a supine position. He immediately carried Crystal out of the unit, where a SCDF ambulance officer attended to her. Crystal was then conveyed to the Accident & Emergency Department of Alexandra Hospital. The medical staff at the hospital could not revive her, and she was pronounced dead on 29 May 2002 at about 12.20am.

Behaviour of the accused at the scene

5 Before the arrival of the officers, several members of public spotted the accused sitting along the common corridor outside units #06-3661/3663, with an infant boy ("the baby") on her lap. The baby was later identified as the deceased's 18-month-old son. According to eyewitnesses, both the accused and the baby appeared calm. The accused had also reportedly pointed to the direction of the said units uttering "Mum and daughter inside" and/or "Mama, *Anak* [child]". One member of public then accompanied the accused and the baby down the block via the staircase.

6 At about 10.53pm Police Sergeant Suhaimi bin Md Kasim ("Sgt Suhaimi") arrived at Block 165 Bukit Merah Central. He met the accused at the ground floor and proceeded to interview her. The accused identified herself to Sgt Suhaimi as "Sundarti". Sgt Suhaimi observed that the accused appeared calm, but seemed to be in pain. Subsequently, the accused was conveyed to the A&E Department of Singapore General Hospital ("SGH"), where she was admitted for treatment on 29 May 2002 at about 12.23am.

The fire

7 A SCDF Fire Investigation Team conducted investigations into the cause of the fire, and drew up a report[1] of its findings. According to this report, the fire was most probably caused intentionally, through the introduction of a naked light to combustible materials around an office area within the units, with petrol being introduced to accelerate the fire. Annex G of the report showed that petrol was detected from the fire debris collected from the three points at the scene (points A1, C and D).

Injuries on the deceased's body and the cause of her death

8 Senior Forensic Pathologist, Dr Gilbert Lau ("Dr Lau"), performed the autopsy on the deceased. In his autopsy report,[2] Dr Lau recorded that he found two stab wounds on the deceased's neck. The first stab wound measured between 1.2cm and 1.4cm in length and the track proceeded downwards, towards the right and slightly backwards, ending at a depth of about 2cm. The second stab wound measured between 2cm and 2.2cm in length and the track proceeded downwards, towards the right and backwards. Dr Lau found that the second stab wound was the fatal injury, as it incised the right carotid sheath, the middle third of the right common carotid artery and terminated at an estimated depth of 6cm. This wound resulted in extensive, severe and acute haemorrhage.

9 Apart from the neck wounds, there was also a series of deep and gaping incised wounds across the deceased's left forearm, as well as the wrist and hand. The deceased's muscles, tendons, nerves and blood vessels were cut. There was a fracture of the left wrist joint and near dismemberment of the left hand at the wrist. There were also several incised wounds on the deceased's right arm and right hand. Dr Lau found that the multiple incised wounds on the deceased's arms were consistent with defensive injuries. Dr Lau also found that most of the defensive injuries on the deceased's upper limbs were inflicted using a cutting instrument with a relatively heavy and sharp blade such as Exhibit P298 (a chopper) or a similar knife. In particular, Dr Lau testified that the injuries to the deceased's forearms were caused by deliberate, downward blows directed at her head or neck with tremendous force.

10 Dr Lau testified that the deceased was already dead when the fire started, and he certified the cause of her death as acute haemorrhage due to the incised right common carotid artery caused by the second stab wound to the neck. Dr Lau opined that the track of this stab wound indicated that it was very unlikely that the fatal injury was self-inflicted. He also stated that a smaller knife (such as Exhibit P292) or a similar knife was likely to have been used to inflict the fatal injury.

Injuries on the accused

11 Dr Ong Lin Yin ("Dr Ong") was the first doctor to examine the accused when the latter was admitted to the A&E Department at SGH. According to Dr Ong's report,[3] the accused suffered four per cent burns over her right leg and right forearm and there were bite marks on her left back, left shoulder and left breast. No other injuries were observed on her. Dr Ong confirmed that the accused's vital signs were stable and she was not in a state of shock. Dr Ong also testified that the accused was not very communicative.

12 Dr Goh Bee Tin ("Dr Goh"), a Senior Registrar of the Department of Oral and Maxillofacial Surgery, National Dental Centre, attended to the accused on 29 May 2002 at about 1.15pm at Ward 43, SGH. She noted three bite marks on the accused's body. The marks were at the lateral aspect of the accused's left breast ("S1"), on her left shoulder ("S2") and on the mid-portion of her back ("S3"). Dr Goh examined the dentition of the deceased, Crystal and the baby. She took dental impressions from them and compared them with S2 and S3. S1 was too indistinct to be identified.

13 Dr Goh concluded that there was a good match between Crystal's dentition and S2 and S3. The deceased's and the baby's dentitions did not match the said bite marks. From the orientation of the bite marks, S2 was inflicted with the biter facing the accused with his/her face over the shoulder of the latter. S3 was inflicted on the left of the accused, with the biter's face over the back of the accused. Dr Goh also noted that since the bite marks were at the phase of acute inflammation at the time when they were first examined on 29 May 2002 at 1.15pm, it was likely that they were inflicted

within the last 72 hours. Although she could not rule out that the deceased might have inflicted S1, she testified that the dimensions of S1 were 30mm by 30mm, and these were quite small for an adult, whose dimensions generally ranged from 34mm to 37mm. Further, the dimensions of S1, S2 and S3 were fairly close to each other.

14 Dr Jasmine Heng ("Dr Heng") testified that the Deoxyribonucleic Acid ("DNA") evidence showed that the accused's clothes comprising one pair of shorts, one T-shirt, one pair of panties and one brassiere were stained with blood that matched the DNA profile of the deceased. Additionally her T-shirt and shorts were also stained with the accused's own blood. However, Dr Heng also gave evidence that DNA testing on the knives and chopper found at the scene was inconclusive.

Testimony of some prosecution witnesses

15 Hong Ngah San Esther ("Esther Hong"), the deceased's staff member, testified that before lunchtime on 28 May 2002, the deceased called her through the intercom and told her to make sure that the accused did not leave the office. The deceased also told her that on a previous night, the accused had brought Crystal out of the bedroom without any reason. Further, Esther Hong, together with Low Siew Kuan Margaret ("Margaret Low") and Ee Kim Lian Nancy ("Nancy Ee"), two other employees of the deceased, testified that at lunchtime, when they were having food at the reception area in the office, the deceased came to them and complained that the accused had eaten her son's food. They added that the deceased had also scolded the accused in front of them.

16 Esther Hong and Margaret Low also testified that they met the deceased, the accused, the baby and Crystal at a handphone shop at Block 166 Bukit Merah Central. While she was there, Margaret Low offered some fruits (longan) to the baby. The deceased stopped her and said that her son was having a cough. Margaret Low then offered the fruit to the accused. However, the deceased stopped Margaret Low from doing so.

17 Ang Kim Wah Rose ("Rose Ang"), the cleaning lady, testified that the accused told her that she was hungry and had not eaten for a few days. Rose Ang gave the accused three biscuits and the accused consumed them. Rose Ang also mentioned that the deceased had a total of eight maids coming and going from her employ over a period of one year or so. Joseph Anthony Nathan Lefort ("Joseph Lefort") testified that on 28 May 2002 at about 8.46pm, while he was in the toilet of Block 165 Bukit Merah Central #07-3661, he heard a lady calling out the words "jangan, jangan". He stated that the voice sounded like a desperate plea for help, and that it was very distressful. Immediately after that, he heard a young child scream.

The accused's statements to various people

18 When the accused was admitted to the A&E Department of SGH, she was attended to by nurses Bebe Zaiton bte Abdullah ("Nurse Bebe") and Wong Martin alias Van Ah Kiong ("Nurse Martin"). She was asked about what had happened, whereupon she informed Nurse Martin that there was a fire, the lights went out and there was smoke.

19 Nurse Aidah Mohd Kassim ("Nurse Aidah") attended to the accused at Ward 43, SGH on 29 May 2002 at about 12.40pm. Nurse Aidah asked the accused in Malay about what had happened. The accused informed Nurse Aidah that she was with her female employer and two children in the office at Bukit Merah at about 9.00pm. She claimed that 11 people came into the office wearing masks that covered their faces. The room then became dark and suddenly, a fire broke out. She also told Nurse Aidah that a woman caused the bites that were found on her body. The accused's narration of events was recorded by one Chua Wee Lian.[4]

20 Assistant Superintendent of Police Michael Sim ("ASP Sim") interviewed the accused in Malay in Ward 43, SGH on 29 May 2002 at about 2.00am. The accused gave him her name as Sundarti and told him that three female persons came into the Bukit Merah units, following which the lights went out and a fire started. She also claimed that another nine male persons entered the units as well. According to ASP Sim, the accused kept on repeating the words "three female persons came, the lights went out and fire started".

21 Nurse Noor Ashikin bte Abdul Kahar ("Nurse Ashikin") interviewed the accused in Ward 43, SGH on 29 May 2002 at about 7.30am. Nurse Ashikin spoke to the accused in a mixture of Bahasa Indonesia and Malay. The accused informed Nurse Ashikin that she was at the shop (the Bukit Merah units) when three women came in and switched off all the lights. The three women were wearing stockings as masks and one of them shouted "quiet" in English. When Nurse Ashikin asked the accused how she sustained the bite marks on her body, the accused replied that a woman had bitten her. Nurse Ashikin then asked the accused whether she fought back, to which the accused replied that she did.

22 Anita Foo interviewed the accused twice in Ward 43, SGH on 30 May and 6 June 2002. Anita Foo spoke to the accused in English and obtained some background information on the accused's family. The accused told her that the assailants had carried and bitten her. They then placed her in a dark and smoky room. The accused claimed that she had dark and vague memories of the event, but was unable to recall the whole incident. The accused also informed Anita Foo that she had no problems and enjoyed her work with her current employer. The accused also allegedly informed her that she was hoping to go back to work after her discharge.

23 Apart from the statements given by the accused soon after the fire and at the hospital, there were 11 other statements made by her on or after 10 June 2002 to two police officers, namely, Assistant Superintendent of Police Ang Bee Chin ("ASP Ang") and Inspector of Police Bahar Bakar ("Insp Bahar"). Two of these were verbal statements and the rest were written. The accused was formally arrested at 3.00pm on 10 June 2002. The Prosecution sought to admit seven of the accused's statements during the conduct of the Prosecution's case, and the Defence sought to admit four when the defence was given. Being satisfied that all the statements sought to be admitted in evidence were given by the accused voluntarily without any threat, inducement, promise or any form of oppression or coercion, the said statements were admitted in evidence. The statements contained both incriminating and exculpatory parts.

24 In brief, the accused claimed that on the night of 28 May 2002, she and the deceased had been involved in a fight, during which both women brandished knives. The accused then claimed that she did not cause the fatal injury to the deceased, as the deceased had inflicted the fatal injury on herself. Additionally, the accused insisted that the injuries on the deceased's limbs were self-inflicted. Several portions of the accused's cautioned statement[5] were significant. These portions are reproduced below:

> Mom [the deceased] ill-treated me. At home, I was made to eat the 2 children's faeces on 3 occasions. Whatever mom held she would throw at me. When I was holding a knife, mom would take it and throw it at me. When I was preparing milk, mom would take the milk and throw it at me. There was a vegetable container in the fridge at home. Sometimes, mom forgot to close the container but she would throw the container at me and told me to close it properly. Sometimes, mom also punished me by telling me to kneel down for 2 hours as punishment and at the same time, I had to pull my ears. These were when mom scolded me for cooking too much porridge for the baby or for [*sic*] the porridge was no tasty enough. If I did not pull my ears, mom would cut $10/= from my pay. If I did not clean up the faeces of the children in the office and mom thinks

that I did not clean it thoroughly, mom would throw the wet tissue used to clean up the faeces at my face. In the office, the children urinated on the carpets with the words 'A', 'B', 'C' and so on. Sir would scold mom because there was urine smell in the office, which was air-conditioned. Mom would scold me for not cleaning up the carpets. I had already cleaned them but there was smell because mom did not allow me to use soap. There was no soap in the office. When the porridge fell on the baby's clothes, I would take tissue to take out the porridge from the clothes but mom would scold me for wasting the tissue, asking me if the tissue belonged to me or my mother, that as if it was my own place. When mom's daughter cried, Sir would scold mom and mom would beat the daughter and she would scold [me] for not knowing how to take care of the children. I could not bear to see mom use cane on her daughter. This is enough. I am pleading guilty to the offence. I am remorseful. I hope the Judge would take into consideration what I have said about mom and give me a fair sentence. There is more I want to say. There are 7 staff in the office and whatever Sir was not happy with the performance of the staff, he would show it to mom. Both of them would argue in the car on the way home and the daughter would be frighten and she would be crying. Sir would also tell mom the maid, meaning me, was not capable of looking after the children. There is one staff by the name of Esther. She likes to give foodstuff to the children. I did not tell mom about this. However, mom knew about this, mom scolded me for allowing Esther to give foodstuff to the children, saying that the children would fall sick. When the son got wind in the stomach, mom also blamed me. The son always fell sick and mom would blame me. I also felt pressurized because of what mom did to the previous maids. I am responsible for causing the office to be burnt. I am responsible for causing mom to die. I am responsible for causing mom's daughter to die. I am angry with mom for pouring hot water on my hands and my left leg, mom also bit me and pulled my hair. Mom also threw telephones at me. Mom tried to kill me with a knife but the knife accidentally struck her daughter twice on the chest. The daughter bled badly. Mom took the knife as if she was in a trance and she was very fierce. I ran towards the kitchen. I took a knife and told mom to stop, otherwise I would use the knife on the son. When I took the knife, I also carried mom's son. I told mom I would count until three and if she did not stop, I would kill her son. Mom was trying to strike me with her knife and I was trying to strike her with mine. Mom's knife is a chopper and mine is a vegetable knife. Mom's knife did not strike me and my knife did not strike mom. Mom's knife cut mom on her own hand. Mom and I struggled in the toilet until the door broke. I managed to escape but mom pursued me. I told mom I was going to count until three and she must kill herself and if she did not, I would kill myself and her son. Before I escaped, mom actually took a kettle in the kitchen and splashed hot water at me. The hot water touched me and also mom. In fact, when I threatened mom that I would kill her son, I was chasing after her son and mom was chasing after me. Mom had some magical power, which nobody could win her. There is a playroom in the office. Mom entered the playroom. Mom poked a knife against her throat and her chest and she was bleeding. I then pulled mom and her daughter to the kitchen. I washed all the knives that had blood. There were 3 knives. I put my shorts that had blood in a pail and put soap and water. I also put my T-shirt in the oven to dry. I then went to mom's office and took money, 2 cards, 2 handphones and went to buy petrol. I took a taxi to the nearby petrol kiosk. After obtaining the petrol, I returned to the office. I poured the petrol in the office at several locations. I lighted a flame. Then, I went to the playroom. The fire became big. I took mom's son but as I did not have the strength, the baby managed to escape. The baby ran towards the door of the playroom. There was fire there. I saved the baby by carrying him and used a chair to break the glass door to come out of the unit. I sat outside the office. I had no strength as I was injured badly. Many people came and saved us. When I was in the hospital, the police took away my clothings. Inside my shorts, there were the money, 2 cards and 2 handphones.

25 These were the primary facts before me. At the close of the Prosecution's case, there was no submission by the counsel for the accused. Having considered the evidence adduced by the

Prosecution thus far, and having regard to the principles articulated in *Haw Tua Tau v PP* [1980–1981] SLR 73, I was satisfied that the Prosecution had made out a case against the accused which if left unrebutted would warrant her conviction. Consequently, the standard allocution was given to the accused, and the courses available were explained to her. The accused, in the event, elected to testify from the witness box.

The defence

26 The accused's testimony follows.

27 The accused was the eldest in a family of three children. Her father passed away in September 2001. Thereafter, she joined a company in Jakarta where she was trained as a domestic maid, and was taught English, cooking and housekeeping. After her training, she was offered work in Singapore as a domestic maid for a Chinese family with three children. She took up the offer and arrived in Singapore in April 1999.

28 After a two-year stint in Singapore, she returned to Jakarta for further training. She returned to Singapore sometime in April 2002, where she met the deceased at an interview. After the interview, the deceased decided to employ the accused on a trial basis. The accused was brought to the deceased's office premises in Bukit Merah. There, she noticed that the deceased had two other maids, referred to as Jami and Aminah. She discovered that she was supposed to replace Jami.

29 In her first two to three days in the employ of the deceased, the accused claimed that she saw the deceased abuse Aminah by pulling her hair, pinching and kicking her. On one occasion, the deceased threw Aminah out of the house, citing unsatisfactory work standards. The police was eventually called in to settle the matter. The next day, Aminah was sent back to her maid agency. The accused also claimed that the deceased abused Jami by slapping her and pushing her head.

30 In this respect, Jami's evidence at trial matched the accused's claim. Jami testified that she was unhappy working for the deceased, who had a tendency to scold, slap, poke and kick her when she made mistakes while working. Sometimes, the deceased would make Jami hold her ears and kneel as a form of punishment. After witnessing the manner in which Aminah and Jami were treated, the accused became frightened and asked the deceased to send her back to the agency. However, the deceased refused her request, telling her that she was new and could learn from Jami.

31 The accused then continued to work for the deceased. Her daily work routine revolved mainly around preparing food, and caring for the children at the deceased's home and office premises in Bukit Merah. The accused's meals usually consisted of leftovers from meals she was told to prepare at home for the deceased's husband ("the husband"), or bread, when there was some at home. For breakfast, she would have one or two slices of bread, and nothing else. She used to have food to eat for lunch when Jami and Aminah were around, as the latter two maids would prepare lunch in the office premises.

32 However, when Jami and Aminah left the deceased's employ, the accused did not eat anything at the office, save for some bread and snacks, which were offered to her by the deceased's staff members at the Bukit Merah office, namely Ong Lay Hong Fiona ("Fiona Ong"), Esther Hong, Margaret Low or Nancy Ee. At times, the accused would help herself to some bread left in the office premises.

33 The deceased was reportedly unhappy whenever her staff gave the accused food, and expressed her displeasure to the accused. However, the accused still accepted the food offered to

her because she needed to have something to eat. For dinner, the accused relied on the leftovers from dinners she cooked at home for the husband. However, when the husband went overseas, the deceased would forbid her from cooking. As a result, the accused would have to go without food. Three weeks before the incident on 28 May 2002, the deceased stopped the accused from cooking at home, thereby preventing her from receiving her rations of leftovers. The deceased's reason for doing this was because she felt that the accused's job performance was not up to mark.

34 The accused then claimed that on two occasions before 28 May 2002, the deceased had gotten frustrated with her and told her to eat the children's faeces. The first occasion was a Sunday afternoon, when the accused told the deceased that she was hungry. The deceased responded by saying that if she was hungry, she should eat Crystal's faeces. The second occasion took place in the husband's room when he was not in Singapore. The accused had asked the deceased whether she should feed the children porridge. The deceased found the accused's question foolish. She told the accused that if the children did not eat the porridge, the porridge would be thrown away, and if the accused wanted any food, she could just eat Crystal's faeces. On both occasions, the deceased did not force the accused to eat the faeces. However, on the second occasion, the accused voluntarily ate the faeces to show the deceased that she would rather eat the faeces of the baby she loved, than the food provided by the insincere deceased.

35 On 26 May 2002, the husband left for Myanmar on business. The accused ate a slice of bread for breakfast. At about 1.30pm she left for the husband's parents' flat with the deceased and the children. The accused stated that the husband's mother had cooked "*bee hoon*", and the deceased gave the accused a bowl of "*bee hoon*" to feed the baby. The accused alleged that she was not given any food to eat when she was at the flat, although she was allowed a drink of warm water. Although she could have asked for a warm beverage, she did not make such a request because she felt shy to ask for food there. When they returned home, the deceased told the accused not to cook, as the husband was not at home. The accused did not prepare anything for herself, fearing a scolding from the deceased if she were spotted doing so. As such, the accused went to sleep without any food.

36 The accused claimed that on 27 May 2002, she did not have anything to eat, as there was no bread at home and the deceased had stopped her from cooking at home. She only had a drink of warm water and went to sleep at night after doing the laundry.

37 On 28 May 2002, the accused woke up at 5.30am and proceeded to do the household chores. At about 8.30am, she fed the baby porridge for breakfast, while the deceased fed Crystal. The accused did not have any porridge, as it contained pork. By this time, the accused was feeling extremely hungry, as the last time she had eaten any food was on the morning of 26 May 2002, when she had had the slice of bread. She then told the deceased that she was hungry, and the latter grudgingly gave her two packets of instant noodles. The accused tried to cook the instant noodles in a cooking pot, but was stopped by the deceased, and told to eat the noodles raw.

38 Nevertheless, the accused took out a plastic container, filled it with hot water and placed one packet of instant noodles in it, together with the sauces. She then sat on a chair in the kitchen and was about to eat the noodles when the deceased came in and told her not to sit on the chair. The accused stood up, and the deceased ordered her to eat the noodles in the toilet. The accused complied. She ate about two to three spoonfuls of noodles when the deceased called for her to leave for the office. Upon hearing the deceased, the accused left the plastic container with the noodles and the unopened packet of instant noodles in the toilet. These items were later recovered by the police in the course of their investigations in the same place and position as described by the accused.[6]

39 At about 11.30am, the accused and the deceased left for the office with the two children. At the office, the accused looked after the two children in a playroom within the office premises, while the deceased attended to her work. At about 2.30pm, the deceased entered the playroom and gave the accused a thermos flask containing noodles to feed the baby. The deceased fed Crystal. While the accused fed the baby, some of the noodles fell on his shirt. The accused used tissue paper to clean the baby's shirt. The deceased noticed this and scolded the accused for using too much tissue paper, "as though it belonged to the accused's parents".

40 Subsequently, the baby urinated on the carpet. The deceased scolded him and used a cane to hit him. Following this, the deceased turned to the accused and hit her on the buttocks with the cane, alleging that she had eaten the baby's food. The accused responded by telling the deceased that she had not eaten the baby's food, but had only blown at the food to make it cooler before feeding the child. The accused was saddened and angered by the deceased's actions. Esther Hong, Margaret Low and Nancy Ee, who were in the office premises at the time, heard the commotion in the playroom.

41 After the children were fed, the accused went to the kitchen to wash the dishes. While she was there, she met Rose Ang, the cleaning lady. The accused told Rose Ang that she was hungry and that the deceased had not given her food for three days. Rose Ang gave the accused three biscuits and the accused consumed them. At trial, Rose Ang, who was called as a witness for the Prosecution, substantially corroborated this aspect of the accused's version of events.

42 The accused then prepared rice, porridge and soup for dinner. At about 6.00pm, the deceased brought the accused and the two children out of the office to run some errands. They were at a handphone shop when they met Esther Hong and Margaret Low, where Margaret Low offered some fresh fruits to the baby. The deceased stopped her, saying that the baby was coughing. Margaret Low then offered the fruits to the accused, but the deceased stopped her saying, "Don't give her". The accused testified that she felt slighted and disappointed when the deceased stopped Margaret Low.

43 The deceased, the accused and the two children then went back to the office. In the office, the deceased spoke to Fiona Ong for some time and then went to the kitchen to get the food ready for the two children. At about 8.00pm, Fiona Ong left the office. Around that time, the deceased and the accused were feeding the two children in the playroom. The accused fed the baby while the deceased fed Crystal. Both women had difficulty in feeding the children, as the children kept moving about. The deceased got impatient and began to scold the accused, claiming that she had come to the office only to sit and eat and did not take proper care of the children.

44 The deceased then took a melamine feeding-spoon and poked it in the ear of the accused. The accused felt pain, although she did not bleed. The accused also testified that this was not the first time the deceased had used a spoon to poke her ear, claiming that the deceased had done the same thing on one other occasion at home. Around this time, the baby had to pass motion. The accused took a pink-coloured potty for the baby to use.

45 After the baby had finished, the accused used a wet tissue to clean him. While she was cleaning the baby, the deceased began to scold her for being too slow and not cleaning the baby properly. The deceased then snatched the soiled wet tissue from the accused and threw it at her face. The soiled tissue hit the left side of the accused's face and left traces of faeces behind. The accused felt like vomiting and was angry.

46 The accused then took another wet tissue to clean the baby. The deceased snatched the

second soiled tissue and threw it at the accused's face again. The tissue hit the accused's nose and bits of faeces were left behind. The accused continued to try to clean the baby with another wet tissue. However, for the third time, the deceased grabbed the wet tissue and threw it at the accused's face. The accused then picked up the three tissues and placed them into the potty. She felt nauseous and told the deceased that she wanted to drink some water, as she was feeling hungry. The deceased told her to continue feeding the baby. The accused then told the deceased a few more times that she was very hungry and wished to go to the kitchen to have a drink. The deceased told the accused to eat the baby's faeces if she was very hungry. The accused felt insulted and angry by the deceased's words.

47 The accused then took a spoonful of faeces from the potty and put them in her mouth. The accused's intention was to show the deceased that she preferred eating the faeces of the baby she loved, rather than to eat the food provided by the deceased. After she ate the faeces, the accused threw the spoon onto the floor and brought the potty to the toilet. She washed her face and went into the kitchen to get a drink of water. While in the kitchen, the accused thought about the way she had been treated by the deceased thus far, and her anger intensified.

48 While drinking the water, the accused did not realise that the deceased was standing behind her. The deceased pulled the accused by the back of her shirt-collar and dragged her into the playroom. The accused fell and sat on the floor. The deceased then told the accused to finish feeding the baby. While the accused was feeding the baby, the child grabbed a computer mouse and played with it. The deceased took the mouse away from him, and the baby started to cry. This annoyed the deceased and she scolded and caned the child.

49 The deceased then told the accused to pack up to leave for home. While packing up and changing the children, the accused asked the deceased whether she wanted Crystal to be dressed in her pyjamas. This question annoyed the deceased further. She pulled a red backpack which the accused was holding, causing her to fall backwards onto Crystal, who was behind her. Crystal started to cry and the deceased attempted to pacify the child.

50 Then the baby took the computer mouse again. The accused took the computer mouse away from him and he began to cry. The accused then tried to give the computer mouse back to the baby to stop him from crying, but the deceased snatched it from her hands, causing the accused to lose her balance and fall on the baby. The deceased then threw the computer mouse at the accused, but missed her.

51 The accused became disturbed by this, stood up and told the deceased, "Ma'am why you do to me everyday like that, I very pain". The deceased reacted by scolding the accused and used her fingers to scratch the accused's face. Although the deceased's fingernails did not leave scratches on the accused's face, the accused felt pain and became angry. She pulled at the deceased's dress, and both women began to wrestle with each other.

52 The accused tried to punch the deceased several times, but the deceased managed to ward off the blows. The accused then grabbed a cable under a table to tie the deceased's hands, but did not succeed. The accused ran to the kitchen to look for something to tie the deceased's hands. While in the toilet, the accused found a rope and returned with it to the playroom. She tried to tie the deceased's hands again, to stop the deceased from fighting. However, she failed and the two women ended up wrestling again. The accused then pressed the rope against the deceased's neck, choking her. At that time, the accused was furious at the treatment she had received all along. She testified that the thought of the treatment made her "blood rise".

53 The deceased had become limp by this time. The accused then threw the rope away and went towards the two crying children to pacify them. She hugged the two children, with Crystal on her left. While the accused was hugging them, Crystal pushed the accused away. According to the accused, Crystal could have bitten her on the left shoulder, but she did not feel any pain. She was, however, unsure of whether Crystal had indeed bitten her. At this point, the deceased got up suddenly and kicked the accused from behind. The two women started to wrestle with each other again. The deceased pulled the accused's hair and banged her head against the wall. They continued to wrestle. The accused then pushed the deceased away and managed to break free. She ran towards the kitchen to look for something to fight the deceased with. The deceased followed the accused into the kitchen and pushed her, causing the accused to lose her balance.

54 The deceased grabbed a kettle and attempted to throw it at the accused. The accused kicked the deceased's leg, causing the deceased to fall into the toilet together with the kettle. As a result, hot water from the kettle spilled onto the accused's left hand and leg. They then wrestled in the toilet. In the process, the toilet door was dislodged and fell on the accused.

55 The accused managed to break free from the deceased again and ran towards the glass door of unit #06-3663. As she was running away, she noticed that the deceased was chasing her with a small knife. The accused reached the glass door but was unable to open it. The deceased stood about two feet away from the accused and tried to stab her. The accused shouted "*jangan*, *jangan*" (meaning "stop, stop" in Bahasa Indonesia), dodged the stabs and ran back to the playroom.

56 When the accused entered the playroom, she spotted the baby and Crystal. She carried Crystal on her left and the baby on her right, intending to use them as human shields to prevent the deceased's stabs. The accused claimed that the deceased continued to attack her with the knife, despite the fact that her two children were being used as shields. The accused became exhausted and dropped the baby on the floor, while continuing to carry Crystal.

57 She then held Crystal in front of her and shifted from left to right to avoid the deceased's stabs. In the process, the knife the deceased was holding came into contact with Crystal's left chest once. Despite this, the deceased allegedly continued trying to stab the accused. The accused managed to back out of the playroom and while she was near the playroom door, she dropped Crystal onto the floor and ran to the kitchen to find something to fight the deceased with.

58 In the kitchen, the accused took a knife[7] and ran back to the playroom with it. In the common office area outside the playroom, the accused saw the deceased running towards her. She side-stepped the deceased, whereupon the deceased ran into the kitchen and emerged carrying two knives in both her hands, a small one[8] in her left hand and a big knife[9] in her right. Both women then fought at different spots in the office. The deceased failed to stab the accused, hitting a computer and table in the office area instead.

59 The accused claimed that the deceased hit her own left hand with the big knife about three to four times. The accused was unsure whether the knife she was holding hit the deceased, although she conceded that the knife she was holding could have touched the deceased when they were fighting in the kitchen. The accused was not injured. The accused then ran to the office common area and picked up the baby. The deceased followed her. The accused held the baby and placed a knife at his neck. She then told the deceased that she would kill the child unless the deceased cut her hand. Subsequently, the deceased allegedly entered the playroom while the accused remained in the office common area. The accused repeated her threats to the deceased. The deceased then sat down and started to "slice" her left hand with the big knife, in a cutting and chopping motion.

60 The accused claimed that the deceased got up and with both knives in both hands, went after the accused again. When the deceased reached Margaret Low's desk, she dropped the big knife and threw books, stationery and telephones at the accused using her right hand. The accused then told the deceased to kill herself, failing which she would kill the baby and subsequently commit suicide. There was a stand-off for about one to two minutes before the deceased went back to the playroom, holding the small knife in her right hand. The accused remained in the office common area holding the baby and pointing the knife at his neck.

61 After the deceased entered the playroom, the accused heard her saying, "I die". There were no more sounds thereafter. The accused then waited a while and entered the playroom. She discovered the deceased lying on the floor of the playroom, with her right hand holding the small knife, which was in turn embedded in the right side of her neck. There was blood flowing from her neck, arms and other parts of her body.

62 She approached the deceased's body and used her right leg to check if the deceased was still alive. There was no response from the deceased. She then withdrew the knife from the deceased's neck, collected all three knives and the deceased's watch, and brought all the items to the toilet, where she washed them. She claimed that the knives were not washed properly. She applied some toothpaste on her arms and legs, as they had been scalded earlier by the hot water from the kettle.

63 The accused then pulled the deceased into the kitchen and left the body there. She took Crystal and placed her on the deceased's body. She did not know whether Crystal was still alive at that time. She also did not call for an ambulance for Crystal, as she claimed she did not know the number of the hospital. She testified that she was in a confused state at that time and did not know what to do. After moving the bodies, she went into the playroom and decided to get rid of the blood with fire. She claimed that she recalled that one could remove blood with fire, as she had seen this being done on television.

64 She then opened the deceased's room using a set of keys found in the playroom. She took the contents of the deceased's wallet (which included US$355 and about S$100) and other valuables from the room. The accused stated that she intended to buy petrol to burn the office. However, she noticed that there was blood on her shirt. She washed her shirt and dried it in the microwave oven before going out of the office. She also found and cleaned a container to keep the petrol in.

65 The accused then left the baby in the office and carried the container with her to buy petrol. She took a taxi to the petrol station and gave the taxi driver, one Haron bin Hashim ("Haron"), a $50 note taken from the deceased's wallet, requesting him to buy some petrol for her. He obliged. She then asked Haron to send her back to Block 165 Bukit Merah Central. After disembarking from the taxi, the accused claimed she spotted a Chinese woman sitting at the taxi stand smoking a cigarette. She approached the woman and bought two disposable lighters from her, one of which was orange in colour[10] and the other, blue.[11]

66 She then returned to the office through the door of unit #06-3663 and spotted the baby near the glass door. She poured the petrol on the tables used by Fiona Ong, Nancy Ee and Margaret Low and on the metal cabinet. She went into the deceased's room and the playroom and poured some petrol in these areas. She then went into the playroom and sat on the floor. She ignited the orange coloured disposable lighter and started the fire. The fire began to spread. She placed the baby beside her and lay on the floor with him. According to the accused, she wanted to die because she could not go back to Indonesia or approach anyone for help. She also claimed that she thought of killing herself, as she assumed she would be arrested and sentenced to death.

67 Then, the baby got up and walked towards the fire. The child's hand and hair caught fire. When the accused noticed this, she quickly got up, grabbed the child and used her hands to put out the fire on him. She tucked him under her shirt and rolled on the floor until she reached the glass door entrance adjoining the two units. While rolling, her lower right hand and part of her right thigh and calf caught fire. She got up and carried the baby to Esther Hong's table. There, she took a chair and broke a glass panel on the door to give the baby some fresh air. By then, the fire had gotten fiercer. The accused walked back to the fire, as she wanted to die. However, she returned to the baby after hearing him cry out for her, and carried him out of the office. The accused then sat along the corridor with the baby on her lap.

68 By this time, a crowd had gathered along the corridor. The accused recalled people talking to her, whereupon she informed them that the deceased and Crystal were still inside. She then told a Chinese man in the crowd that she wanted to go to the hospital because she and the baby were burnt. The man then followed the accused and the baby to the void deck. The accused claimed that she could not recall if she met a police officer (Sgt Suhaimi) at the void deck.

69 She was then conveyed to SGH, where Nurse Bebe and Nurse Martin attended to her. She recalled Nurse Martin asking her some questions, to which she responded that there was a fire, the lights went off and there was smoke. She was then given an injection that made her dizzy and heavy headed. She was having a headache, felt sleepy and was not aware of the things that were taking place around her.

70 She claimed that when she was at the hospital, she did not think of anything because she was putting up with the pain that she was under. She was also scared that the deceased's and Crystal's faces would haunt her, although she did not feel responsible for their deaths. The accused then recalled meeting various hospital staff and police personnel, to whom she narrated her initial version of events, as set out earlier. She was extensively questioned on her statements given to the police. She changed and chopped her stories and there were substantial retractions on her part.

Closing arguments for the Defence

71 The Defence relied on the accused's testimony and argued that she was not guilty of the offence of murder, as she had not stabbed the deceased, the deceased having killed herself. The Defence also contended that three exceptions to the offence of murder were available to the accused. These were the exceptions of provocation (Exception 1 to s 300 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC")), private defence (Exception 2 to s 300 PC) and sudden fight (Exception 4 to s 300 PC). The latter argument was made as an alternative, in the event that I was to find that the fatal wound was indeed caused by the accused.

Exception 1 – Provocation

72 The Defence argued that culpable homicide was not murder if the offender, while deprived of his or her self-control by grave and sudden provocation, caused the death of the person who offered the provocation. In this case, the Defence claimed that the provocation emanated from the deceased. Counsel argued that on 28 May 2002, the deceased had acted unreasonably, and in a humiliating and insulting manner towards the accused. The accused was angered by this treatment and was therefore provoked into causing the death of the deceased.

73 The Defence then detailed the deceased's alleged acts which constituted the grave and sudden provocation. I reproduce this aspect of the Defence's submissions:[12]

1. depriving her of her food by not providing food since her last breakfast on 26th May 2002;

2. not allowing her to cook food for her[self] to eat on 26th & 27th May 2002;

3. not allowing her to sit on the chair to eat in the morning;

4. asking her to eat the Maggi mee raw;

5. asking her to eat in the toilet;

6. not allowing her to finish eating the 2 packets of Maggi mee;

7. using the cane and hit [*sic*] on her buttocks;

8. scolding and accusing her of eating Baby's food in the office;

9. preventing Margaret (PW37) from even giving some fruits to the Accused;

10. poking the spoon into her ears;

11. slapping and throwing the soiled tissues on [her] face;

12. refusing the Accused [*sic*] to drink water to relieve her hunger;

13. asking the Accused to eat Baby's faeces in the potty;

14. dragging her by the neck of her T-shirt from the kitchen to the playroom;

15. pulling the red backpack from the Accused causing her to fall backwards on Mei Mei [Crystal];

16. pulling the computer mouse from the Accused causing her to fall on Baby;

17. throwing the computer mouse at the Accused;

18. scratching the Accused['s] face with her fingers.

74 Additionally, defence counsel argued that the accused had been feeling angry at the manner in which the deceased was treating her since she commenced work. In this respect, the accused claimed that she was subject to much abuse over a period of time prior to 28 May 2002. As such, on the fateful day, after having been subject to all of the above ill-treatment, abuse and humiliation, the accused claimed that she was in a state of anger.

75 The accused also alleged that the deceased had pulled her by the back of her collar and dragged her, thereby causing her to feel incensed. The accused added that the acts of provocation did not end there, but continued when the deceased pulled a red backpack and a computer mouse that the accused was holding, causing her to fall. The accused then confronted the deceased, whereupon the deceased scratched the accused's face.

76 It was further submitted by defence counsel that it was this last act of the deceased that was the proverbial straw that broke the camel's back. The accused then lost her self-control and pulled at the deceased's dress, leading to the fight and subsequently, the deceased's death. The

Defence tried to distinguish the facts in the cases of *Ithinin bin Kamari v PP* [1993] 2 SLR 245 and *Lau Lee Peng v PP* [2000] 2 SLR 628 from the present case. Counsel submitted that in these two cases, the acts of provocation were minor or did not stretch for a period of time, whereas in the present case, there was a series of grave acts of ill-treatment, abuse and humiliation, all of which constituted the grave and sudden provocation emanating from the deceased towards the accused, and caused the accused to lose her self-control.

Exception 2 – Right of private defence

77 Defence counsel next argued that when a person exercises his right of private defence of person or property against someone, and thereby causes the death of that person without any intention of doing more harm than is necessary for such private defence, his act of causing the other person's death is not murder, but culpable homicide.

78 Defence counsel relied on the Court of Appeal decision of *Soosay v PP* [1993] 3 SLR 272 to argue that for this exception to apply, the accused only had to prove on a balance of probabilities that:

(a) the right of private defence has arisen;

(b) the right was exercised in good faith;

(c) the death was caused without premeditation; and

(d) the death was caused without any intention of doing more harm than was necessary for the purpose of such defence.

79 Counsel then submitted that the deceased had confronted the accused with a small knife in her hand, and had chased her to the glass door of unit #06-3663. Counsel submitted that, as in *Soosay v PP*, the accused's right of private defence arose when this incident occurred. Additionally, counsel argued that the threat from the deceased continued when the deceased attacked the accused with a chopper and a knife as well. The accused then responded by fighting back. Counsel argued that in both instances, the accused was in imminent danger of harm, if not death.

80 Counsel thus submitted that at all times, the accused's act of arming herself with a knife to act against the deceased was for the protection of her own life, and was not for the sake of gaining an undue advantage over the deceased. If not for the accused's exercise of her right to private defence, she would have been hurt or even killed by the deceased. As such, counsel argued that, given the circumstances, the accused was entitled to exercise her right of private defence.

Exception 4 – Sudden fight

81 Finally, the Defence relied on Exception 4 to s 300 PC, which states that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. Counsel relied on the Court of Appeal decision in *Tan Chun Seng v PP* [2003] 2 SLR 506, where it was held that there are three main ingredients in the defence of sudden fight, namely:

(a) a sudden fight in the heat of passion upon a sudden quarrel;

(b) the absence of premeditation; and

(c) no undue advantage or cruel or unusual acts involved.

82 Counsel evidently relied on the accused's testimony pertaining to the events of 28 May 2002 to submit that the fight between the accused and the deceased, which led to the death of the deceased, was not planned by the accused at an earlier date, but was one which erupted unexpectedly when the deceased scratched the accused's face. Additionally, counsel submitted that the accused was unarmed at the time the fight started and that it was the deceased who first armed herself with a knife and chased the accused. Counsel also argued that the accused did not gain any undue advantage over the deceased, as it was the deceased who was the aggressor at all times.

83 Further, although the accused may have been a little bigger than the deceased, defence counsel submitted that she never used her slight advantage in size or height to start the fight and overwhelm the deceased. Counsel therefore argued that the three main ingredients in the defence of sudden fight had been satisfied and, as such, Exception 4 to s 300 PC should apply in this case. Defence counsel further submitted that since the Defence had raised the foregoing issues, it remained for the Prosecution to prove its case beyond a reasonable doubt.

The Prosecution's response to the Defence's contentions

84 The Prosecution tackled the Defence's contentions on three levels. First, the Prosecution submitted that the objective facts of the case proved that the accused was guilty of murdering the deceased. Second, it was submitted that the accused was not a credible witness and that her testimony in court was entirely unbelievable. Third, the Prosecution attempted to show why each of the three exceptions to s 300 PC, as raised by the Defence, did not apply in this case.

The Prosecution's arguments on the accused's guilt

85 The Prosecution charged the accused under s 300(c) PC. I reproduce the relevant section below:

> Except in the cases hereinafter excepted culpable homicide is murder 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.

86 The Prosecution relied on the case of *Tan Cheow Bock v PP* [1991] SLR 293, where the then Court of Criminal Appeal cited the judgment of Bose J in *Virsa Singh v State of Punjab* AIR (45) 1958 SC 465. The Prosecution submitted that in order for s 300(c) PC to be made out, it had to prove the following beyond a reasonable doubt:

(a) that a bodily injury was present;

(b) the nature of the bodily injury;

(c) that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of bodily injury was intended; and

(d) that bodily injury inflicted was sufficient in the ordinary course of nature to cause death.

For convenience, I shall term the above "the test in *Virsa Singh*".

87 The Prosecution reiterated that Dr Lau's evidence clearly showed that the injuries suffered by the deceased were not suicidal, as suggested by the accused, but homicidal. Therefore, the Prosecution submitted that limbs (a), (b) and (d) of the test in *Virsa Singh* had been established. The Prosecution was then left to prove limb (c) of the test in *Virsa* Singh, that is, whether the accused had intended to inflict that particular bodily injury on the deceased. The Prosecution referred to the cases of *Ang Sunny v PP* [1965–1968] SLR 67, *Shepherd v R* (1990) 97 ALR 161 and *PP v Oh Laye Koh* [1994] SGHC 129, submitting that these cases represented the law on circumstantial evidence in Singapore. I reproduce a portion of the judgment in *Shepherd v R* (*per* Mason CJ at 165), which is a succinct statement on this aspect of the law of evidence:

> As I have said, the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact – every piece of evidence – relied upon to prove an element by inference must itself be proved beyond reasonable doubt. … Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.

88 The Prosecution then highlighted the following series of what it termed objective facts, that had been proved by the evidence of witnesses other than the accused:

(i) On 28 May 2002, the deceased, her two children and the accused arrived at the office at Bukit Merah Central at about noon.

(ii) Throughout the day, the accused was looking after the two children in the office.

(iii) The deceased and accused fed the children lunch.

(iv) During lunchtime, the deceased complained to her staff that the accused had eaten her son's food.

(v) The deceased scolded the accused in front of the staff.

(vi) At about 5pm, the deceased left the office with the two children and the accused to do some errands.

(vii) The deceased purchased a new hand-phone at about 6.25pm.

(viii) They returned to the office at about 7pm with groceries and the new handphone.

(ix) At about 8pm, Fiona Ong (PW21) left the office and locked the main door, leaving behind the deceased, her two children and the accused. The deceased and the accused were feeding the two children in the playroom.

(x) At about 8.43pm, a "999" silent call was made from the office.

(xi) At about 8.46pm, Anthony [Joseph] Lefort (PW35) heard someone shouting "Jangan, jangan" followed by the scream of a young girl.

(xii) At about 10pm, the accused boarded the taxi of Haron (PW28).

(xiii) At about 10.08pm, Haron helped the accused to purchase petrol at a Caltex Petrol

Station along Jalan Bukit Merah.

(xiv) At about 10.41pm, the fire was reported to the police.

(xv) Sometime past 10.30pm, members of the public arrived at the scene and they saw the accused sitting along the corridor outside the office unit with [the baby] on her lap.

(xvi) At about 10.49pm, the first firemen arrived at the scene.

(xvii) The deceased and Crystal's bodies were recovered from the burning premises. They had died before the fire started.

(xviii) The deceased suffered numerous defensive injuries on her left and right arms as well as her hands. She also sustained two stab wounds, one of them fatal, on her neck.

(xix) The defensive injuries and the stab wounds found on the deceased were likely to have been inflicted by the knives found in the office premises.

(xx) The defensive injuries were caused before the stab wounds to the neck.

(xxi) Crystal suffered a single stab wound to her chest.

(xxii) The accused lied to the nurses at SGH, ASP Sim (PW49) and Anita Foo (PW36) about the incident.

(xxiii) The accused suffered 3 bite marks, *two of them caused by Crystal, and the other could have been caused by Crystal.*

(xxiv) The accused sustained burns on her right leg and hand.

(xxv) The accused did not sustain any other injury.

(xxvi) The accused's T-shirt, white shorts, bra and panties were stained with the deceased's blood.

During the course of its final submissions, the Prosecution deleted the words shown in italics in items (xix), (xx), (xxii) and (xxiii).

89 The Prosecution then contended that the circumstantial evidence in this case was compelling against the accused, and as the fatal stab wound was homicidal and not suicidal, the only logical inference was that the accused had stabbed the deceased in the neck. The Prosecution relied on the principle in *Ang Sunny v PP* ([87] *supra*) and submitted that the cumulative effect of all the evidence led to the irresistible inference that the accused intentionally attacked the deceased and inflicted the injuries to the deceased's arms and hands and further, she intentionally inflicted the two stab wounds on the deceased's neck. One of these stab wounds to the neck was then sufficient in the ordinary course of nature to cause death, thereby coming under s 300(c) PC.

The Prosecution's arguments on the veracity of the accused's evidence

90 The Prosecution next submitted that from the evidence, it was clear that the accused had given two versions of the events of 28 May 2002 and/or including the events leading up to 28 May 2002: the first was her version to the people at SGH and the second, that gleaned from her

statements to ASP Ang and Insp Bahar, and her testimony in court. The Prosecution contended that the fact that there were two differing versions of events spoke volumes about the accused's veracity, or lack of it. Additionally, the Prosecution argued that the accused's second version of events was riddled with lies and inconsistencies.

91 The Prosecution argued that the accused had repeatedly lied in court and that her evidence in the oral and written statements she had provided out of court were filled with lies and material inconsistencies. The Prosecution submitted that the lies told by the accused out of court, in her statements, corroborated her guilt. The Prosecution relied on the case of *R v Lucas* [1981] QB 720 in support of this proposition. I reproduce the relevant portion of the judgment in *R v Lucas*, where the court (at 724) enunciated a four-fold test in determining whether the lies of an accused could amount to corroboration of that accused's guilt:

> To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

92 The Prosecution highlighted that this four-fold test was cited with approval by the Court of Appeal in *PP v Yeo Choon Poh* [1994] 2 SLR 867. The Prosecution then highlighted what it alleged were crucial lies made by the accused. I reproduce the Prosecution's submissions as follows:

> In Exhibits P209, P211, P213 and even in Court, the accused lied that the deceased had cut her hands and stabbed herself twice in the neck. This is in contrast to the *expert* evidence by Dr Lau (PW23), who opined that the first deceased's injuries were homicidal and not likely to be self-inflicted.
>
> In Exhibit P212, the accused lied that the deceased had bit her on her left shoulder blade and left chest. Dr Goh found three bite marks on the accused and opined that two of the bit marks matched Crystal's dentition and not the deceased (S2 and S3).
>
> In Exhibits P209 and P211, the accused lied that the deceased had splashed hot water on her. In Exhibit P212, the accused claimed that she knocked over the flask causing hot water to fall on her lower hand and lower leg. However, the medical evidence shows that the accused did not suffer any scalding injuries.
>
> In Exhibit P212, the accused lied that the deceased had scratched her face. Furthermore, in her evidence in court, the accused lied that the deceased had poked her ear with a spoon, thrown soiled tissues at her and thrown a computer mouse at her. She also lied that she sustained several injuries during the fight with the deceased. Despite this, the medical evidence shows that no injuries were found on the accused apart from the burn wounds on her arm and leg, and the 3 bite marks.
>
> The accused lied to ASP Sim (PW49) that three female persons and nine male persons had entered the office and the fire started. The accused also lied to Nurse Aidah (PW48) and Nurse Ashikin (PW43) that three women came into the office and switched off all the lights. The accused alleged to Nurse Ashikin that the three women were wearing stockings over their faces and one of them shouted at her to keep quiet as the baby was crying. The evidence shows that

there were no signs of forced entry into the office and no other person was involved in the incident. Further, it was the accused who had poured the petrol and set off the fire in the office.

The accused lied in her police statements and in Court that the deceased had stabbed her daughter.

The accused lied to Haron (PW28) about the reasons for wanting to buy petrol.

93 The Prosecution submitted that the accused's alleged lies in her statements could not be cursorily dismissed as mistakes made out of confusion or fear. The Prosecution argued that the various witnesses who came into contact with the accused were struck by her calmness and lack of emotion. Moreover, Exhibit P208 was written by the accused herself. The Prosecution argued that the length and details to which the accused narrated the events showed that she was able to give a full account of what had happened. The number of lies in her statements only served to show that the accused was trying to cover up her lies with even more lies.

94 The Prosecution therefore submitted that these lies were deliberately made up by the accused. The Prosecution also argued that the lies obviously related to material issues, since a large number of them pertained to the circumstances surrounding the deceased's death. As the lies went directly to exculpate the accused, they were clearly motivated out of guilt and a fear of the truth. Further, the Prosecution contended that a number of independent witnesses had provided evidence to show that the various statements made by the accused amounted to lies. As such, the Prosecution argued that the test in *R v Lucas* was satisfied, and that the accused's lies not only went towards her credibility, but were also evidence corroborative of her guilt.

The Prosecution's arguments on the exceptions to s 300 PC

95 Lastly, the Prosecution argued that the burden was on the Defence to prove that the exceptions to s 300 PC applied in this case: *Mohamed Kunjo v PP* [1975–1977] SLR 75; *Somwang Phatthanasaeng v PP* [1992] 1 SLR 850. The Prosecution then argued that the Defence would not be able to discharge this burden, since the accused's position from the outset was that she did not kill the deceased and that the deceased had killed herself.

96 As such, the Prosecution submitted that the moment the Defence failed to show that the accused did not kill the deceased, the accused ought to be convicted as charged, with no room for the application of the exceptions. However, for the sake of completeness, the Prosecution did make submissions pertaining to whether the exceptions to murder applied in this case.

Exception 1: Provocation

97 The Prosecution submitted that two requirements must be met before the defence of grave and sudden provocation can be raised successfully. In support of this proposition of law, the Prosecution cited the cases of *PP v Kwan Cin Cheng* [1998] 2 SLR 345, *Lau Lee Peng v PP* ([76] *supra*) and *Seah Kok Meng v PP* [2001] 3 SLR 135. First, there is a subjective requirement that the accused must have been deprived of her self-control by the provocation. Second, there is an objective requirement that the provocation must have been "grave and sudden", which incorporates the application of the "reasonable man" test. This latter test involves considering whether an ordinary person of the same gender and age as the accused, sharing such of his/her characteristics as would affect the gravity of the provocation, and placed in the same situation as the accused, would have been so provoked as to lose her self-control. Individual peculiarities which merely affect the accused's power of self-control but not the gravity of the provocation should not be taken into account: *Ithinin*

bin Kamari v PP ([76] *supra*).

98 A further relevant consideration to the second requirement would be the test of proportionality. I reproduce a part of the judgment in *PP v Kwan Cin Cheng*, where the court (at [69]) described this requirement in succinct terms:

> However, in our view, a "proportionality" criterion would be more accurately expressed in the following terms: in deciding if an accused had exercised sufficient self-control for the objective test, a relevant question may be whether the degree of loss of self-control was commensurate with the severity of the provocation.

99 The Prosecution made submissions on the first issue of whether the accused was deprived of her self-control. This was the subjective requirement. It was argued that in ascertaining this, the accused's behaviour during the material time would be of great evidential value. The Prosecution raised the case of *Lim Chin Chong v PP* [1998] 2 SLR 794 in support of this argument. There, the Court of Appeal held that the appellant in question did not lose his self-control. Instead, the appellant "went about killing the deceased in a cool, calm and methodical way", which was an indication that the murderous acts "were not the acts of a man who has lost control of himself and was in a frenzy. They were calculated and premeditated acts".

100 The Prosecution relied on the judgment of the court in *Lim Chin Chong v PP* and drew parallels to the present case. It was submitted that no evidence was adduced to show that the accused was in fact deprived of her self-control when she killed the deceased. The Prosecution argued that the accused's version of events had always related to how she was reacting to the deceased's alleged aggressive behaviour. Based on the accused's own version of events, she was seen to have had the presence of mind to use the children as human shields and to run to the kitchen in search of a knife to defend herself with. From this, the Prosecution argued that it was clear that the image of the accused was not one of an enraged killer who had lost her self-control, but one very much in control of her mental faculties.

101 Additionally, the Prosecution argued that the behaviour of the accused following the commission of the offence should be taken into account in considering if there was a deprivation of self-control: *Lau Lee Peng v PP* ([76] *supra*). The Prosecution submitted that in this case, it could not be inferred that the accused had lost her self-control, as she had shown great composure and acumen in moving the bodies, washing the knives, ensuring that her clothes were clean of bloodstains, applying Colgate to her scalds, taking a taxi to purchase the petrol and eventually setting the office on fire. Further, witnesses, including the taxi driver (Haron), had observed that the accused seemed calm and composed at all times.

102 The Prosecution thus argued that these calculated and methodical actions did not depict a person who had lost her self-control, but showed a person who was very conscious and aware of what she was doing at all times. As such, the Prosecution argued that the accused failed to show that she had subjectively lost her self-control. The Prosecution then addressed the objective second requirement of whether there was grave and sudden provocation.

103 The Prosecution argued that there were two important elements in this objective requirement, that is, the provocation must be grave and sudden. No matter how grave the provocation is, if it did not take place contemporaneously or shortly before the killing, the exception would not apply. Likewise, no matter how contemporaneous a provocation is to the act of killing, the defence would not be available if the provocation is not sufficiently grave. The Prosecution then detailed a series of alleged abuses the accused endured at the hands of the deceased. It was argued that first, the

alleged abuses never occurred and second, even if these allegations were true, they could not have amounted to such grave and sudden provocation that would have caused a reasonable person in the accused's position to lose her self-control.

104 The Prosecution recapitulated the testimonies of the husband and some of the deceased's staff, who had testified that apart from the deceased scolding the accused, they did not observe the deceased abusing the accused in any other manner. The Prosecution posited that the accused had on one occasion left a previous employer because they had been too "fussy". As such, it was argued that the accused knew her avenues of recourse if she had indeed been abused by the deceased, that is, to lodge a complaint with her agent, the police, the Ministry of Manpower or the Indonesian Embassy. However, she did none of the above. The Prosecution submitted that this was an indication that the allegations of abuse were suspect.

105 The Prosecution also attempted to play down the accused's claims that she was deprived of food prior to the events leading up to the death of the deceased. It was argued that there was ample evidence that food was readily available in the deceased's office and home. The accused had also admitted that on the morning of 28 May 2002, the deceased had given her two packets of instant noodles.

106 The Prosecution then went on an alternative argument and submitted that even if one were to assume that the accused was a truthful witness, the deceased's abusive acts would still not amount to grave and sudden provocation. First, the Prosecution argued that much of the accused's accounts of abuse occurred before the accused and the two children left with the deceased to run some errands. As such, the requirement of suddenness was not satisfied, and thus these acts of abuse could not be relied upon as grave and sudden provocation. However, the Prosecution did concede that these abusive acts could still be relevant to the "mental background" they created in the accused on the evening in question.

107 A similar issue of a "mental background" was discussed in *PP v Kwan Cin Cheng* ([97] *supra*), where the accused had been subjected to derogatory remarks made by his girlfriend prior to him killing her. However, the Prosecution submitted that unlike in the case of *PP v Kwan Cin Cheng*, the acts of abuse here did not contribute significantly to the question of whether a reasonable person would have lost his/her control at the material time. The Prosecution added that not only were some of the acts of abuse trivial, but there was also a significantly long cooling-off period between the alleged abuse and the killing, which would have mitigated their effects on the accused's mind.

108 The Prosecution then dealt with the English Court of Appeal decision of *R v Ahluwalia* [1992] 4 All ER 889. In that case, the accused contended, *inter alia*, that the history of violence and humiliation caused by her husband amounted to provocation and that the trial judge erred in failing to consider that she suffered from a "battered woman syndrome" when she killed her husband. As such, she argued that her conviction for murder should be reduced to manslaughter. In coming to its decision, the court (at 896) held:

> We accept that the subjective element in the defence of provocation would not as a matter of law be negatived simply because of the delayed reaction in such cases, provided that there was at the time of the killing a "sudden and temporary loss of self-control" caused by the alleged provocation. However, the longer the delay and the stronger the evidence of deliberation on the part of the defendant, the more likely it will be that the prosecution will negative provocation.

109 The Prosecution then considered the applicability of the accused's arguments in *R v Ahluwalia*, and noted several points. First, the tests for provocation in England and Singapore are different. The

requirement of suddenness relates not to the provocation but to the loss of self-control. Second, the accused person in *R v Ahluwalia* had suffered years of physical and psychological abuse before killing her husband. This abuse was far more serious than that alleged by the accused in the present case. Third, while the court did not dispute that mental characteristics of a person should be taken into account in determining if a reasonable person with the same characteristics would have lost his/her self-control, the court (at 898) found that:

> [T]here was no medical or other evidence before the judge and jury, and none even from the appellant, to suggest that she suffered from a post-traumatic stress disorder, or "battered woman syndrome" or any other specific condition which could amount to a "characteristic" as defined in *R v McGregor* [1962] NZLR 1069.

110 The Prosecution then argued that the same could be said in the present case, as there was no evidence that the accused was labouring under any "battered woman syndrome". As such, the Prosecution urged that in applying the objective reasonable person test, this factor should not be taken into account.

111 The Prosecution then made submissions relating to the acts of abuse that occurred after the accused, the two children and the deceased had arrived at the office unit after finishing with the errands. The Prosecution argued that although the accused claimed that the deceased told her to eat faeces on three occasions, the deceased did not force her to do so. Further, the accused claimed that she had eaten the baby's faeces on 28 May 2002 voluntarily, in order to spite the deceased. This act, the Prosecution claimed, depicted a person with resolute will and self-control, rather than a person who had been overwhelmed by grave and sudden provocation.

112 The Prosecution also submitted that the acts involving the deceased pulling the accused's shirt, making her lose her balance and throwing the computer mouse at her would not be sufficiently grave or sudden to make a reasonable person lose his/her self-control. It was also argued that the same could be said of the allegations that the deceased scolded the accused. Such scolding would not be serious enough to warrant any drastic action by any reasonable person.

113 The Prosecution also asserted that the severity of the injuries inflicted on the deceased suggested that the objective element of the test for provocation had not been satisfied. In *PP v Kwan Cin Cheng*, it was held that a relevant question to be asked in considering if the objective element was present is whether the degree of loss of self-control is commensurate with the severity of the provocation. The Prosecution argued that if indeed the accused had lost her self-control, the severity of the injuries she had inflicted on the deceased indicated that the degree of loss of self-control far surpassed the severity of the provocation. The Prosecution relied on the words of the Court of Appeal in *Seah Kok Meng v PP* ([97] *supra*) where it was held at [26] that "[a] reasonable person, who was not out to get even, would not, in the circumstances, have gone on to search for some weapon and carry out an assault of this kind".

114 The Prosecution's final submission in relation to provocation was that even if it was accepted that the deceased's alleged acts were sufficient to have provoked the accused, the provocation would clearly have "evaporated" when the accused strangled the deceased until she became limp. The accused could, and should have, left the office or tied the deceased up. In relation to this submission, the Prosecution referred to *Lim Chin Chong v PP* ([99] *supra*), where it was held at [31]:

> Neither, in our view was the provocation, if indeed there was provocation, grave and sudden. … If it did, then the immediate and spontaneous reaction was the punch on the nose which on our understanding of the appellant's own evidence immobilised the deceased to such an extent that

he was able to leave the room, find the electrical wire and return to tie the deceased up and gag him. On any objective test the provocation of being sodomized had simply evaporated …

115 On these bases, the Prosecution argued that Exception 1 to s 300 PC, the exception of provocation, ought not to apply. The Prosecution then turned to the other exception relied on by the accused, the right of private defence.

Exception 2 – The right of private defence

116 The Prosecution's argument on this issue was that the right of private defence never arose in favour of the accused, since it was the accused who was the aggressor from the outset, and not the deceased. The Prosecution then relied on Dr Lai's evidence regarding the defensive injuries on the deceased's arm, arguing that it was an indication that the deceased was on the defence against the accused's attacks at all times.

Exception 4 – The defence of sudden fight

117 The Prosecution submitted that contrary to the Defence's claim, there was no evidence of any sudden quarrel between the deceased, which then erupted into a sudden fight. It was also argued that there were no injuries found on the accused, apart from some burn injuries sustained by the accused, and the three bite marks. This was submitted as an indication that no fight or struggle had taken place involving the accused. The Prosecution also argued that it would have been impossible for the accused not to sustain any injuries, considering the struggle and the knife-fight, all within the confines of a narrow office space. As such, since the sudden fight exception to murder was premised upon the occurrence of a fight to start with, the lack of a fight would make the defence unavailable.

118 Additionally, the Prosecution argued that the amount of injuries found on the deceased's body, coupled with this lack of injuries on the accused, showed that the accused was the aggressive attacker throughout the incident. In the alternative, the Prosecution argued that even if there was a sudden fight between the two women, the accused had clearly taken undue advantage and acted in a cruel and unusual manner. The Prosecution submitted that there was no evidence to suggest that the deceased was armed, since the accused suffered no knife wounds. This, the Prosecution claimed, was clear evidence that the accused had taken undue advantage of the deceased. In this respect, the Prosecution referred to the case of *Phua Soy Boon v PP* [1995] 1 SLR 285, where the Court of Appeal (at 291–292, [31]) held, in relation to the issue of sudden fight:

> Even if we were to accept that there was a sudden fight, which we were not inclined to, the fact that the appellant used a sharp chopper against the unarmed deceased showed that he had taken undue advantage of the deceased. There was no evidence that the appellant suffered any injury from the alleged fracas with the deceased, yet he had inflicted, not one, but two gaping wounds on a very vulnerable part of the deceased's body.

119 The Prosecution then submitted that it was Dr Lau's evidence that the fatal stab wound to the deceased's neck was inflicted after the various defensive injuries were caused to her left arm. Therefore, the accused clearly had an "unfair advantage", to use a phrase adopted by the court in *Mohamed Kunjo v PP* ([95] *supra*) as another meaning of "undue advantage", when she delivered the fatal stab to the deceased's neck, as the latter was already severely injured and in a vulnerable state.

120 The Prosecution also submitted that the horrific injuries suffered by the deceased were

evidence of an unmistakably savage and cruel attack by the accused. There were no less than ten slash wounds found on the deceased's left arm alone. The Prosecution posited that these slash wounds were probably inflicted when the deceased raised her arms to fend off the accused's attacks, which were targeted at the deceased's head region. This was further evidence of the viciousness of the accused's attack. As such, the Prosecution submitted that the accused's arguments in relation to the defence of sudden fight could not succeed.

The decision

121 I considered both the Prosecution's and the Defence's arguments in their entirety before arriving at my decision to convict the accused on a lesser charge of culpable homicide not amounting to murder. My reasons are as follows. From my analysis of the arguments from both sides, three main issues emerged. They were:

(a) whether the accused's version of events in relation to how the deceased had died should be accepted;

(b) whether the accused was guilty of murder under s 300(c) PC; and

(c) whether the exceptions to s 300 PC applied in favour of the accused.

Issue 1 – The accused's version of events

122 Much of the difficulty about this case revolved around the fact that apart from the accused's version of the events of 28 May 2002 from 8.00pm to 10.41pm ("the material time"), no other versions were available. There were no eyewitnesses to what occurred during the material time, and therefore no witnesses to corroborate most parts of the accused's story.

123 The only witness available to speak of the incident as it was unfolding was Joseph Lefort, and even then, his account was merely with regard to what he had heard, not what he had seen. Nothing conclusive could be arrived at from the shouts of "*jangan, jangan*" that Joseph Lefort heard, although it pointed more strongly to the possibility that they could have been uttered by the accused. Even then, this account did not reveal anything about the *actual* events during the material time, only weakly confirming that a fight had occurred. The situation being such, I had to turn to the objective evidence at hand and infer from these facts the most likely account of what happened during the material time.

124 In this respect, the only evidence I could refer to was the pathologist's report on the post-mortem performed on the deceased's body. I found Dr Lau's report of strong evidential value. It was a detailed description of all the injuries suffered by the deceased, and a clear explanation as to her death. After closely scrutinising Dr Lau's report together with his testimony in court, I accepted his description of the deceased's injuries as "defensive", and his finding that the fatal stab wound to the deceased's neck was not self-inflicted.

125 This therefore neutralised one crucial part of the accused's version of the events during the material time. This was the part where the accused claimed that it was the deceased who cut her own left hand and stabbed herself in the neck, following threats from the accused. The only persons present at the scene during the material time were the accused, the deceased and the deceased's two children. As such, apart from the accused, no other person could have inflicted the injuries and the fatal wound on the deceased, considering the nature of these injuries.

126 At this juncture, I noted that the accused had clearly abandoned her initial version of events regarding the 11 persons who had entered the office and turned off the lights, electing to proceed with the version that was under scrutiny at trial. There was then a credibility gap between the accused's initial and final versions. As the trial proceeded on the basis of the accused's final version of events only, I found little difficulty in throwing out the accused's initial version of events. I therefore found the circumstantial evidence in this case to be strong enough to lead me to infer that it was indeed the accused who had inflicted the injuries and the fatal wound on the deceased. I then turned to the implications of this finding on the charge of murder against the accused.

Issue 2 – s 300(c) PC

127 Before I proceeded with my decision on this issue, I would like to make some observations on the state of the law with regard to s 300(c) PC. Recently, I read with interest an article by Stanley Yeo, "Academic Contributions and Judicial Interpretations of Section 300(c) Murder" in *The Singapore Law Gazette*, April 2004 at p 21. The article discussed several Singapore cases in relation to the interpretation our courts have attributed to s 300(c) PC. I found this article extremely helpful to my own observations on s 300(c) PC.

128 Most recently, our law pertaining to s 300(c) PC has taken a shift in terms of the interpretation that has been given to it. The Court of Appeal in *Tan Chee Wee v PP* [2004] 1 SLR 479 at [43] held that:

> [I]n examining whether s 300(c) has been made out, the court's approach to *mens rea* is only to determine whether the accused had intended to cause the injury that resulted in the victim's death.

Until recently, the interpretation our courts have attributed to s 300(c) PC has remained very much objective. However, the court in *Tan Chee Wee v PP* has taken a step towards a subjective interpretation of the said section. As such, I feel that some comment on the recent state of the law would be merited. I therefore take this opportunity to revisit the local judicial interpretation pertaining to s 300(c), up till the decision in *Tan Chee Wee v PP*, before coming to my decision.

129 Essentially, much of our jurisprudence pertaining to s 300(c) PC has involved some discussion of the Indian Supreme Court's decision in *Virsa Singh v State of Punjab* ([86] *supra*). However, not many of our decisions have managed to capture the essence of the test in *Virsa Singh*. Some of our former decisions have attributed an entirely objective interpretation to s 300(c) PC, interpreting it to mean that once it has been proved that an accused intended to cause some form of bodily injury, the remaining inquiry immediately becomes an objective one of whether the injury in fact inflicted was indeed sufficient to cause death. That being the case, even if an accused intended to inflict only a minor injury, it was sufficient to result in a conviction for murder so long as the injury *actually inflicted* was sufficient in the ordinary course of nature to cause death.

130 I found this situation to sit very oddly with the test in *Virsa Singh*, which takes a different approach to interpreting s 300(c) PC. One need only turn to another Indian Supreme Court decision for a clear explanation of the test in *Virsa Singh*. In *Rajwant Singh v State of Kerala* AIR (53) 1966 SC 1874, it was held at 1878:

> As was laid down in *Virsa Singh v State of Punjab*, … for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an *intention to inflict that*

very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established. [emphasis added]

From this, it would appear that it was necessary to establish that an accused did not intend any other injury but that very injury that indeed caused the death of the deceased. With this principle in mind, I proceeded to analyse the application of s 300(c) PC on the facts of the present case.

131 I scrutinised the Prosecution's submissions in relation to the test in *Virsa Singh* and found that the Prosecution's division of the test into four limbs was largely accurate. However, I held that in terms of structure, it would have been more appropriate to lay out the test in this manner:

(a) show that a bodily injury was present;

(b) establish objectively the nature of the bodily injury and whether it was sufficient in the ordinary course of nature to cause death; and

(c) prove that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of bodily injury was intended.

In this way, the objective factual inquiry pertaining to the presence and the nature of the bodily injury (limbs (a) and (b)) is established first as a matter of course, before the subjective legal test as to whether the accused had an intention to inflict that particular injury that indeed caused the death of the deceased is applied. I found that it was important to maintain this clear separation between the two inquiries in order to avoid any confusion between the terms "objective" and "subjective". The first inquiry is thus an objective forensic inquiry and the second, a judicial one. This then took me to my decision on the main issue, which is whether the accused was guilty of an offence under s 300(c) PC.

132 I had to rely on Dr Lau's evidence in relation to the factual inquiry encompassed in limbs (a) and (b) of the test I laid out above. I had already accepted Dr Lau's evidence in relation to the fatal injury found on the deceased's body. This was the second stab wound that incised the deceased's right carotid sheath, the middle third of the right common carotid artery, and terminated at an estimated depth of 6cm, resulting in extensive, severe and acute haemorrhage that ultimately caused the death of the deceased. As such, I found that the medical evidence before me clearly showed that there was indeed a bodily injury, the nature of that bodily injury was clear and it was established that this bodily injury was sufficient in the ordinary course of nature to cause death. I was therefore convinced that the first two limbs were satisfied beyond a reasonable doubt.

133 The next inquiry was the judicial one. Here, as mentioned by me earlier, the circumstantial evidence was clear enough for me to infer that it was the accused who had inflicted the injuries on the deceased, including the second fatal stab wound. From the nature of the multiple injuries that had been inflicted on the deceased's body, it was clear to me that the injuries had not been caused by accident. The inflictor of the injuries must have intended to inflict them. In this regard, I took into consideration Dr Lau's evidence that the injuries were inflicted with "tremendous force". Such use of force must have been deliberate.

134 I then turned to consider the two injuries found on the deceased's neck, one of which was the fatal blow. Taking these injuries, inflicted on a most vulnerable part of the human body, in light of all the other injuries that had been inflicted, it was clear to me that the fatal wound too was not caused by accident.

135 I was convinced that the Prosecution had established beyond a reasonable doubt that the accused had intended to inflict the particular neck injury that was sufficient in the ordinary course of nature to cause death, and that had indeed caused the death of the deceased. With this, I moved to the last issue, that of whether the exceptions to s 300 PC raised by the accused were indeed available to the accused.

Issue 3 – The exceptions to s 300 PC

136 As detailed earlier, the Defence relied on three exceptions to s 300 PC, those of provocation, right to private defence and sudden fight. I dealt with each exception in the order in which they were raised.

Provocation

137 I found that the key factor here was the accused's version of events regarding the acts of alleged abuse committed by the deceased. I had to make a finding of whether these acts of abuse had indeed occurred, and if they did, whether they amounted to provocation within the meaning of Exception 1 to s 300 PC. In a nutshell, the Defence attempted to portray the accused as a maid in an abusive employer-employee relationship, who had completely lost her self-control during the material time, whereas the Prosecution attempted to portray the accused as a calm, methodical killer who was in full control of her senses. In this respect, the Prosecution also made submissions to the effect that the accused was not a credible witness. As such, the Prosecution urged that her accounts of abuse be discredited.

138 I first turned to the Prosecution's submission that the accused was not a credible witness because she had given two very different versions pertaining to the events of 28 May 2002. I agreed with the Prosecution that the accused had indeed lied in her initial version of events. The Prosecution urged me to apply the test in *R v Lucas* ([91] *supra*), where it was held that an accused's false statements out of court could be used at her trial in order to corroborate her guilt. Likewise, it was argued that the accused's statements out of court must be held against her different version in court, thereby corroborating her guilt. I thoroughly understood the Prosecution's point. However, what I was being invited to do was to disregard the accused's final version of events relied upon in court solely on the basis of her false statements out of court.

139 I was unable to accept this contention. On my perusal of the accused's testimony in court, I found that there was some truth to various aspects of the accused's version of events. I scrutinised the accused's version of events in three main parts. First, there were the accounts of abuse. Second, there was the account pertaining to the quarrel and scuffle between the two women (which commenced at the point when the deceased scratched the accused's face). Finally, there was the account where the accused claimed that the deceased cut her arms and stabbed her neck pursuant to threats by the accused. The objective evidence before me has already led me to a finding that it was the accused who had caused most, if not all, the injuries found on the deceased's body. Therefore, I rejected the last part of the accused's version of events.

140 I then scrutinised the first part of the accused's story pertaining to the abuse she suffered. The Prosecution urged me not to accept the accused's accounts, arguing that she had falsified them entirely. In this regard, the Prosecution adduced evidence from the husband and some of the deceased's staff to show that apart from scolding the accused, they did not see the deceased abuse the accused. However, one had to bear in mind that many an act of abuse is usually carried out when no inquisitive eyes are present.

141 I recalled that the Prosecution made an attempt to disclaim each of the accused's alleged episodes of abuse. For instance, it was argued that even if the accused had eaten the children's faeces, this could not have been abuse since the deceased did not force the accused to eat the faeces. I felt that it was not necessary to analyse whether each and every incident of abuse actually occurred before I made a finding that the accused was indeed abused *in general*. I was convinced that the accused was telling the truth with respect to some, if not all, of her accounts of abuse.

142 In this regard, I accepted the accused's story that the deceased had ordered the accused to eat noodles in the toilet. Here, I noted that the accused's story was corroborated by the fact that the police had actually discovered the noodles in the toilet. I found that the accused must have felt humiliated by being disallowed to eat on a chair like a normal person, but being made to eat in the toilet instead. Further, I also accepted the accused's assertions that the deceased had refused to give her food. In this respect, I found that the accused's assertions were corroborated by the evidence of Rose Ang, to whom the accused had complained of hunger, and of not being fed for a few days. Margaret Low's evidence also confirmed the accused's claim that the deceased prevented other people from giving the accused food. These are but a few incidents. In all probability, there might have been more.

143 I then came to the next part of the accused's version of events pertaining to the scuffle between the two women. I accepted that there had indeed been a struggle between the two women during the material time. In this respect, I referred to Joseph Lefort's testimony pertaining to what he had heard during the material time. Although his testimony did nothing to reveal what actually happened, it was sufficient to convince me that, at least, a fight had broken out between the two women.

144 I therefore accepted the accused's version of events pertaining to the abuse she had suffered and the fight between her and the deceased. However, I rejected the part of her story regarding the actual slashing and stabbing of the deceased. At this juncture, I recalled that I was entitled to accept one part of a witness's story while rejecting another part: *PP v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15; *Ng Kwee Leong v PP* [1998] 3 SLR 942. This brought me back to the issue of the test in *R v Lucas* ([91] *supra*) raised by the Prosecution. I found that although the accused had lied in her statements out of court, holding these falsified statements against her to corroborate her guilt or to discredit her as a witness would mean disregarding perfectly acceptable portions of her testimony in court. This would be a disproportionate reaction, especially in a trial where the capital punishment was involved. Having found that parts of the accused's evidence in court were indeed truthful, I declined to make a finding that the accused's falsified statements out of court corroborated her guilt.

145 I noticed that the Prosecution also argued that in the course of the trial, the accused clarified some of her evidence and was thus inconsistent. For instance, the Prosecution claimed that the accused first mentioned that there was no food in the office for lunch and then later clarified that there was some bread in the office. In my evaluation, the said clarification is not such a significant inconsistency as to undermine the accused's defence of grave and sudden provocation.

146 I accepted the Prosecution's submissions pertaining to the law on provocation in Singapore. Essentially, there are two requirements to be met, the first being the subjective requirement that the accused must have been deprived of her self-control by the provocation, and the second being the objective requirement that the provocation must have been grave and sudden.

147 In relation to the first requirement, the crux of the issue was really whether the accused had lost her self-control as a result of the provocation that she had been placed under. In this respect, I

noted that the Defence relied on the long series of abuse suffered by the accused and the fight that had occurred between the two women as being the provocation in this case. I had already accepted that on the facts, there was indeed a series of abuse and a fight during the material time. The inquiry into whether this provocation was then "grave and sudden" enough fell within the ambit of the second objective requirement. I will therefore discuss this issue in greater detail later.

148 I encountered some difficulty in relation to the first requirement of a loss of self-control. The accused's story throughout the trial had been that she had not stabbed the deceased. As such, it became difficult for the accused to turn around with another story saying that she had stabbed the deceased, but had been provoked into doing so. This sort of difficulty is not unexpected in any case where an alternative argument of this kind is submitted. However, having already found that it was the accused who had inflicted the injuries found on the deceased's body, the only issue that was still left to be determined remained at whether the accused had lost her self-control when she inflicted these injuries. I noted that Dr Lau's evidence was highly pertinent in this regard. I reproduce, again, the aspects of his evidence that was crucial to my decision on this issue:

> There were at least 10 wounds on the deceased's left forearm. The injuries were arranged in a haphazard manner and their distribution suggest that they were inflicted by downward blocks of a cleaver or chopper with tremendous force to such an extent that the deceased's left hand was nearly dismembered at the wrist … The distribution and haphazard nature of these injuries would indicate that they were sustained in self-defence and the depth and severity of the injuries would also indicate that a great or large amount of force had been used.

149 The pathologist's description of the nature of the injuries found on the deceased's body was chillingly graphic. I found it necessary to repeat his description here. Dr Lau recorded that the deceased's left forearm, wrist and hand had a series of gaping, and deep incised wounds. The deceased's muscles, tendons, nerves and blood vessels were cut. There was a fracture of the left wrist joint and near dismemberment of the left hand at the wrist. There were also several incised wounds on the deceased's right arm and right hand. In particular, Dr Lau noted that deliberate, downward blows directed at the head or neck with tremendous force caused the severe injuries to the deceased's forearms. The question that then struck me was what could have led the accused to participate in such a bloody attack.

150 The accused appeared to me to be a mild-mannered, soft-spoken person, frail in appearance with a light frame. At the material time, she was also weak with hunger and had been involved in a violent and gruesome encounter with the deceased.

151 From the objective facts before me, I found that to inflict the kind of injuries found on the deceased's body, the accused had to have been in a frenzy of sorts. She must have been so blind with rage that she lost all control over herself and lashed out repeatedly at the deceased, resulting in the "haphazard" nature of the injuries. The loss of self-control must have also been of such magnitude that she was able to inflict the severe wounds on the deceased "with tremendous force". This was despite the fact that the accused was probably drained of energy during the material time. I found this to be a strong sign of an enraged attack committed by one who had lost all self-control. I emphasise that this was not a view I arrived at based only on the number of injuries suffered by the deceased. It was an irresistible inference I drew from the nature of the injuries and the surrounding circumstances as well.

152 At this juncture, I wish to make it abundantly clear that it is not the case that in all situations where a deceased has suffered multiple wounds that there will invariably be a finding of a frenzied attack. If this were so, situations of a purely intentional, vicious attack would slip through

the cracks and allow an unmeritorious accused the defence of provocation. Everything depends on the facts of each case. On these facts, there was sufficient evidence to show that the accused had indeed lost her self-control due to the lengthy term of provocation she had endured.

153 I then observed that the Prosecution relied on the case of *Lau Lee Peng v PP* ([76] *supra*) and urged me to consider the accused's behaviour after the material time. The Prosecution submitted that the accused looked calm and in control of herself. It was argued that her actions after the killing were calculated and methodical, depicting a person who was conscious and aware of what she was doing at all times. I was unable to accept this argument. I agreed that the manner in which a person behaved after the commission of an offence is important. However, there is no definite formula in cases of this kind.

154 It cannot be said that a particular trait or pattern of behaviour *must* be observed on the part of an accused post-killing, in order to determine whether she had lost her self-control during the time of the killing. Different people react differently in different situations. This is why the test pertaining to whether an accused had lost his/her self-control was made subjective. For instance, the actions of the killer post-killing in *PP v Kwan Cin Cheng* ([97] *supra*) differed from the actions of the killer in *Lau Lee Peng v PP*. Everything depended on the facts of the individual case. A general submission that the calmness of an accused post-killing meant that she must have been calm throughout the time of the killing was not convincing. I therefore found that the subjective requirement that the accused had lost her self-control as a result of the provocation was satisfied. I then turned to the objective requirement of a "grave and sudden" provocation.

155 The Prosecution argued that the requirement of suddenness, for one, was not satisfied on the facts of this case, as the accounts of abuse occurred long before the events of 28 May 2002. I agreed, in so far as the Defence sought to adduce the entire period of abuse prior to 28 May 2002 as going towards the acts of provocation, that these acts of abuse were too remote in time from the killing to constitute a "sudden" provocation. However, I found that these acts of abuse were still relevant to the question of whether the provocation that was offered was "grave" enough. The Prosecution had itself conceded that the abusive acts could still be relevant to the "mental background" that they created in the accused during the material time.

156 In this regard, I found that these seemingly separate events of abuse linked up with each other like a chain. The effect of each separate event was consistent, *ie* the deceased had acted in a manner that humiliated the accused and caused her physical pain. As such, I was able to find that these many separate events were actually closely linked to each other, as they presented an overall picture of an abusive and poor employer-employee relationship. This was extremely relevant to establishing the accused's "mental background" at the time of the killing. This thus went towards showing whether the events of 28 May 2002 satisfied the requirement of a "grave" provocation.

157 The Prosecution then argued that the events of 28 May 2002 were not so serious as to justify the reaction from the accused. I do not accept this argument. The Prosecution's contention seemed to ignore the totality of the provocative acts together with the accused's "mental background", choosing to focus on the individual events of abuse only. A mild scolding or a nagging from the deceased on one day would not be considered a grave provocation. However, a series of nagging, scolding, insults, humiliation, physical abuse and lack of food over a period of time, culminating in a quick succession of abuse on 28 May 2002, would be sufficiently grave to provoke a reasonable person in the accused's position.

158 At this juncture, it might perhaps be instructive to refer to the facts and findings of an English case. The appellant in *R v Roberts* [2002] EWCA Crim 1069 was a man who had cared for his

aunt in her old years. However, his aunt's response to his care was to nag at him constantly. I found these portions of the findings of the English Court of Appeal at [7]–[15] particularly instructive:

> 7 … Quite apart from the daily routine, on the occasions when she went to the hairdresser for an appointment, he was responsible for washing her and helping her dress. She claimed that she could not wash her genitalia, and although he found the process profoundly distasteful, he did what was necessary. He would then take her to the hairdresser in a wheelchair, collecting her afterwards and returning her home. On Sundays he would take the lunch prepared by his wife to his aunt's. She insisted that her food was cut up so that she could use a spoon rather than a knife and fork. When he used one of her knives in order to cut the food, she complained that the food looked like scraps, so he took to bringing a knife from his home for the purpose. Without going into any further detail, the responsibilities for his aunt meant that the appellant had only been on holiday three times in the previous 10 years, and then only for a few days. When he suggested that he might go away, there was always a row in which he was accused of neglecting her. He had taken to altering dates on documents, to pretend that he was attending seminars in connection with his work.
>
> 8 None of these essential features of the case was in dispute. Equally, his aunt's reaction to all this care and devotion was the opposite of kind. She nagged constantly at him, complaining generally about the lack of care, and his inadequacies. The nagging descended into abuse, and sometimes hysteria. We can summarise the effect of the evidence by quoting the language used by the trial judge:
>
> > There is ... a vast amount of unchallenged evidence that this old lady was persistently and ungratefully offensive to Mr Roberts, who had been looking after her for years. The evidence you may think indicates that during all this time his response, at worse, had been to shout at her in frustration.
>
> …
>
> 11 Events on 7 June 1993 itself can be described shortly. Before leaving for work, the appellant visited his aunt as usual that morning. He set about the chores. Although she normally woke up during this process, on this occasion she did not do so, and he decided to save time, and probable trouble, by leaving her asleep. He went home, changed into his work clothes, and drove to work. He realised that his failure to wake his aunt would be likely to cause trouble when he next returned, so as a distraction, he tried to make arrangements for her to visit a relative. He felt tired at work all day, and as he drove home that evening he kept nodding off. By the time he arrived home he was 'totally shattered'. He flopped into a chair and, as a 'tonic' he had [a] wine glass full of elderberry wine. Mrs Edwards [the aunt] was visited during the day by the community nurse, and a former neighbour. They found her in good form. At about 7.30 pm the community nurse returned and stayed for between 5 – 10 minutes. She noticed that Mrs Edwards was upset about some mail that had arrived during the morning post.
>
> 12 At about 8 pm the appellant went, as he saw it, to 'face the music' with his aunt. As he anticipated she was annoyed at him for not waking her. She waved a bank statement at him, complaining that she was heavily overdrawn at the bank. An argument developed. It was heard by a neighbour. He told her about the possibility of a trip to a relative. The argument continued. He explained that the bank statement was out-of-date. There had been a recent payment in. The argument turned to money. He reminded her that she was getting more rent from one of her properties because he had intervened to help. She dismissed this, saying he had done nothing to help her. When he insisted that he had, she kept shouting at him 'no, no, no', and would not let

him get a word in. He lost his temper, put his hand over her mouth shouting at her 'yes, yes, yes'. He then left her house. He went to the Park Place Hotel, where according to his evidence, he drank two soft drinks and one pint of beer. In the meantime Mrs Edwards telephoned a neighbour in a distressed state. She also telephoned the doctor complaining that she had suffered a heart attack. Such complaints were not unusual. Mrs Duncan, the neighbour, went to see her, remaining until 9.10 pm. The doctor visited her, staying for about 15 minutes. Mrs Duncan returned about 1/2 hour later, staying for another 10 minutes. In the meantime the appellant went to his wife's home. He said he was distressed about his aunt. He wanted to talk the situation over. Unfortunately there was a row with his wife. He left her house in a temper. He slammed the door. He put his fist through the glass. He hurled a bicycle to one side. He returned to his one address in Mwrog Street. There he drank two half pint tumblers of elderberry wine, and pottered around the house.

13 At about 9.50 pm, he was standing by his own front door, preparing himself and plucking up the courage, as he put it, to go back to his aunt's house to sort out her food and settle her down for the night. Mrs Duncan saw him standing by his own front door. She thought, from the movements of his hands and general attitude, that he was in a bad mood about something. He said that he did not want to respond to her, because he had already had enough for that night, and still had to face his aunt.

14 He walked over to his aunt's house. He was carrying a knife, for use in the preparation of her food. It was common ground that there was nothing unusual or significant about him taking a knife with him for this purpose during his evening visits to his aunt. When he arrived at his aunt's home, and she saw him, she immediately started screaming and shouting at him that he was 'rotten'. Something inside him snapped. He stabbed her. He could not recall how many times he had stabbed her and indeed he did not really realise what he had done for a little while. When he did, he made a telephone call to the police. At 9.58 pm a telephone call was received in which he admitted that he had killed his aunt at her home. He also telephoned his brother-in-law. At 10.08 two police officers arrived at Mrs Edwards' house. They found the appellant at the rear living room standing at the foot of a single bed. Mrs Edwards was lying there. He said 'I've killed her, fuck me, there's the knife, I've stabbed her', and pointed to a telephone table.

15 The appellant was arrested and cautioned. He replied, 'Yes, okay, I am not going to try to run away otherwise I would not have rung you'. He was escorted out of the room into the front living room. He then became agitated saying, 'Fuck me, I've done it now I am a murderer. I am really in the shit now. I cannot believe I killed her'. On medical examination at the police station, minor superficial injuries were noticed to his right wrist, left hand and left shin, which were consistent with the earlier outburst of bad temper at his wife's home. …

159 The question before the Court in *R v Roberts* pertained to whether the defence of provocation was adequately canvassed before the jury. The court held (at [25]) as follows:

By current standards, provocation was not adequately canvassed before the jury. The issues which arise are not new found. There was a significant body of evidence before the jury, relevant for their consideration on provocation, but confined at trial to diminished responsibility. *If that evidence, and the further evidence which would have been available to support provocation* [*in*] *its full modern ambit had been appreciated, in our judgment there would have been a realistic prospect that the trial jury would not have excluded provocation*. We are troubled by this conviction. We do not think it safe. Accordingly the appeal will be allowed. The conviction for murder will be quashed. A verdict of manslaughter will be substituted. A new trial would serve no useful public interest.

[emphasis added]

Although the question in the present case was different from that in *R v Roberts*, the similarities in the facts of both cases could not be ignored. In my view, each instance of abuse should not be taken apart and scrutinised separately.

160 I have already established that these individual events of abuse over a period of time went towards forming the "mental background" in the accused at the time when the acts of provocation, *ie* the events of 28 May 2002, were offered. In *R v Roberts*, it was apparent that the incessant nagging of the deceased formed such a "mental background" (although the court in *R v Roberts* did not use these very words) in the appellant, so much so that the deceased's accusation of his being "rotten" caused him to lose his self-control. On a normal occasion void of any "mental background", the word "rotten" might not have sparked the appellant into a frenzied rage. However, when the word "rotten" is observed alongside the appellant's "mental background", it is understandable why that particular word was a sufficiently "grave" provocation.

161 Likewise, in the present case, I found that the instances of abuse added up over a period of time and weighed on the mind of the accused. The accused's words to the deceased before the scuffle between the two women was an example of the *total* effect the separate instances of abuse had on her: "Ma'am why you do to me everyday like that, I very pain." The question to be asked then was whether a reasonable maid in the position of the accused, that is a maid with this sort of "mental background", would have been so provoked by the acts of the deceased at the material time. I would have to answer this in the positive. The "mental background" caused by the sustained abuse suffered by the accused generated enough tension, such that the provocative actions of the deceased on 28 May 2002 became sufficiently "grave" the moment they occurred. Therefore, I found that the element of a "grave" provocation was met.

162 I then turned to consider the requirement of "suddenness". The Prosecution argued that the accused could not be allowed to rely on the events of 28 May 2002, as there had been a significantly long cooling-off period between the alleged abuse the accused suffered on 28 May 2002 and the killing. The Prosecution submitted that this cooling-off period negated the possibility that the acts of provocation were sudden. The Prosecution also submitted that during the scuffle, there were moments when the accused had time apart from the deceased in order to cool down. I disagreed with this argument.

163 I was unable to find that there was a sufficient break in time that provided the accused with a cooling-off period. From the accounts of the events of abuse and fighting on 28 May 2002, up to the point when the deceased was killed, I found that the incidents between the two women were part of an ongoing process. The events were actually contemporaneous and not spaced out, as the Prosecution contended.

164 One of the Prosecution's main contentions was with regard to the point in time when the accused choked the deceased till she became limp. The Prosecution argued that this was a sufficient break in time for the accused to "cool off", putting an end to the provocation. I disagreed. I found that the Prosecution failed to consider that after the incident where the accused choked the deceased till she became limp, the deceased had gotten up after a while and kicked the accused, sparking off another series of fights. There was therefore sufficient evidence before me to find that the provocation from the deceased had also continued throughout the material time.

165 The Prosecution's arguments, while understandable, failed to take into account the fact that the provocation was ongoing on the facts of this case. There were most certainly the odd moments

when the accused had a breathing space of a minute or so. However, the deceased would then re-ignite the fight. The "breathing spaces" in between were thus not so significant or lengthy enough to constitute a cooling-off period sufficient to put an end to the provocation. I was therefore able to find that the provocation offered by the deceased was indeed real and present during the material time, thus satisfying the requirement of a "sudden" provocation.

166 Although this would be sufficient to determine the issues pertaining to the exception of provocation, I noted that the Prosecution raised the English Court of Appeal case of *R v Ahluwalia* ([108] *supra*). The Prosecution raised this argument as a pre-emptive one, as the Defence did not raise this case in their arguments. The Prosecution attempted to distinguish this case by arguing that the abuse suffered by the appellant in *R v Ahluwalia* was far worse, and over a longer period of time, than by the accused. As such, the Prosecution argued that the principles in *R v Ahluwalia* were not helpful to the Defence's case.

167 The most interesting position in the case of *R v Ahluwalia* was in relation to the "battered woman syndrome", and I noticed that the Prosecution brought most of its arguments in respect of this part of the judgment. However, I found that the Prosecution's arguments were premature. The accused did not rely on the principles pertaining to the "battered woman syndrome", found in *R v Ahluwalia*. If indeed the Defence had raised the case of *R v Ahluwalia* in support of an argument that the accused was suffering from the "battered woman syndrome", I would have in the end dismissed the argument. This was because there was no evidence before me to hold that the accused was indeed suffering from such a depressive condition. In fact, this was the very reason why the appellant in *R v Ahluwalia* could not prove to the court that she was suffering from the "battered woman syndrome".

168 Additionally, I found that the Prosecution's arguments, that the abuse suffered by the appellant in *R v Ahluwalia* was far worse than that suffered by the accused in the present case, led nowhere. At most, this argument assisted the Prosecution in factually distinguishing the case of *R v Ahluwalia* from the present case. However, as the Defence itself had not raised *R v Ahluwalia* in support of any aspect of its arguments, I found that the Prosecution's arguments were essentially against a non-issue.

169 As I found that the exception of provocation was indeed available to the accused, I held that the accused was only guilty of the offence of culpable homicide not amounting to murder. As such, the charge of murder had to be reduced accordingly. Although this would have been sufficient to dispose of this case, for the sake of completeness, I must deal briefly with the two other exceptions to s 300 PC that were raised by the accused.

Right of private defence and sudden fight

170 Here, I was in agreement with the Prosecution. The exceptions hardly applied to the accused in this instance. Going by the defensive injuries found on the deceased's body and the fact that the accused was not harmed, it could not be said that the accused had an extending right of private defence.

171 As for the defence of sudden fight, I found that there had indeed been a fight between the two women that came within the meaning of Exception 4 to s 300 PC. However, I also found that the accused did not meet the proportionality requirement for a successful invocation of the exception.

Conclusion

172 This is an exceptionally tragic case. It is tragic and sad both for the deceased and the accused. The baby has lost his mother and sister. The husband has lost his wife and a daughter. The court heard that the deceased's family has a strong Christian background and persuasion, and I trust that the abiding faith and the love of the Lord in them will heal their wounds and give them the solace and strength which they much deserve. I must say that I feel their pain and share their sorrow.

173 As for the accused, the situation is no less tragic. She is a frail and helpless-looking woman who came from Indonesia to work as a domestic maid. She came here to eke out a living in order to support herself and members of her family. Now, she faces a grave charge which attracts the death penalty.

174 The question is, why did all of this happen on the fateful evening of 28 May 2002? What went wrong so suddenly that caused the mayhem and the death of two persons? What triggered all of this? Was this a mindless killing carried out by a cold-blooded killer, as was suggested by the Prosecution, or was it an act due to a sudden burst of pent-up feeling and rage, as a result of insults and ill-treatment brought to bear on the accused?

175 In sum, the Prosecution's case was that the accused wantonly killed her employer and having done it, tried to conceal it by not only lighting a fire to the office where the incident took place, but also endeavouring to fabricate a host of stories to escape the consequences.

176 The accused, who was the only person alive to tell what happened on that day, was found to be wanting in her explanation as to how the injuries seen on the deceased came to be inflicted. Her claim, that after a struggle between them the deceased dealt the mortal blows on herself, cannot possibly be true, having regard to forensic evidence that conclusively proved that the injuries found on the deceased were defensive in nature, and that they could not have been self-inflicted. Available evidence inescapably pointed to the conclusion that it was the accused who had caused the injuries on the deceased, and that it was she who dealt the mortal blows. The question is, why?

177 The story of the accused that she was deprived of food and suffering from hunger, at least on 28 May 2002, received a measure of confirmation from some of the Prosecution's witnesses. First, Rose Ang, the cleaning lady working for the deceased, said that on the fateful day, around noon, the accused told her that she was hungry and had not eaten for sometime. Rose Ang then gave the accused some biscuits out of pity. Second, Esther Hong, Margaret Low and Nancy Ee, all employees of the victim, confirmed that the deceased was seen scolding the accused for eating spoonfuls of the baby's food. Third, Margaret Low confirmed that when she offered some fruits to the accused that evening at a handphone shop, the deceased prevented her from doing so.

178 Next, the account of the accused that on the morning of 28 May 2002, she practically had to gulp in a hurry a few mouthfuls of noodles in the kitchen toilet, as she was rushed by the deceased, was corroborated when the police found a plastic container with the remnants of noodles floating in some red coloured liquid in the kitchen toilet of the deceased's flat. Furthermore, there was also evidence of some serious unhappiness on the part of the deceased towards the accused for many a lapse on the part of the accused, such as not doing her work properly, carrying Crystal in the middle of the night for no reason and allegedly eating the baby's food. Despite all the lies uttered by the accused to extricate herself from her guilt, there was cogent evidence to conclude that the deceased subjected her to some measure of ill-treatment. However, I must add that I found the accused's claims that the deceased made her eat faeces to be extravagant. These claims were discounted in the final analysis.

179 Nevertheless, given the simmering tension and a readiness on the part of the deceased to

fault and be severe to the maids in her employment where there was any shortcoming or any further deficiency, a reasonable inference was that there was a sudden eruption; the accused, having had enough, lost her self-control and went berserk in fatally attacking the deceased. The nature of the injuries found on the deceased strongly suggested to me that these were the acts of a person possessed of a frenzy and denuded of self-control. In my view, the cord of reason suddenly snapped when the accused could no longer control her emotions and feelings of despair. No doubt, she told many lies to extricate herself from the dilemma she was found to be in. However, the evidence from the prosecution witnesses showed that there were acts on the part of the deceased to bring about the frenzied reaction from the accused, availing her to the defence of grave and sudden provocation.

180 Blackstone in his *Commentaries on the Laws of England* (15th Ed, 1809) vol 4, at p 190 says that there are degrees of guilt, which divide the offence of criminal homicide into manslaughter and murder. He further says that "manslaughter arises from the sudden heat of the passions, murder from the wickedness of the heart". It was not lost on the court that whatever the accused did that day should be juxtaposed with her act of holding on to the baby and saving him from the very fire that she lit. This act clearly evinced to the court that the accused was not an embodiment of wickedness and evil, but a woman of normal emotions who went awry momentarily.

181 In my view, having regard to all the objective facts, notwithstanding the untruths uttered by the accused in court over the injuries, the Defence had proved on a balance of probabilities that Exception 1 to s 300 PC, namely the defence of grave and sudden provocation, applied in this case. This was sufficient to reduce the charge to the lesser offence of culpable homicide not amounting to murder. Consequently, I find the accused guilty of the lesser charge punishable under s 304(a) PC and convict her accordingly. I shall hear counsel on the question of sentence.

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[1]Exhibit P207

[2]Exhibit P193

[3]Exhibit P192

[4]Exhibit D1

[5]Exhibit P209

[6]Exhibits P154 and 155

[7]Exhibit P295

[8]Exhibit P292

[9]Exhibit P298

[10]Exhibit P243

[11]Exhibit P263

[12]At para 329 of the Defence's Closing Submission