

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

[2023] SGHC 146

Criminal Case No 60 of 2021

Between

Public Prosecutor

... Prosecution

And

Zin Mar Nwe

... Accused

JUDGMENT

[Criminal Law — Offences — Murder]

[Criminal Law — Special exceptions — Diminished responsibility]

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Public Prosecutor

v

Zin Mar Nwe

[2023] SGHC 146

General Division of the High Court — Criminal Case No 60 of 2021

Andre Maniam J

9–11 November 2021, 6, 11 January, 6 September, 22–23 September 2022, 30 November, 1 December 2022, 18 May 2023

18 May 2023

Judgment reserved.

Andre Maniam J:

Introduction

1 The accused worked in Singapore as a foreign domestic worker for some four months from January to May 2018. She was just 17, but it appeared from her passport that she was 23. She had been instructed by her agent to declare her age as 23 (which was the minimum age to work here as a foreign domestic worker).

2 The accused started working for Mr “S” on 10 May 2018, and stayed at Mr S’s flat with his family (Mr S, his wife, and their two teenage daughters). On 26 May 2018, they were joined by the deceased, Mr S’s 70-year-old mother-in-law, who had come to Singapore to stay with Mr S’s family for a month.

3 On 25 June 2018, the accused stabbed the deceased to death. She was charged with murder the following day.

The charge

4 The accused was charged with murder under s 300(c) read with s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed), for inflicting multiple stab wounds on the deceased with a knife, with intention to cause those injuries, which injuries are sufficient in the ordinary course of nature to cause death.

5 The accused stabbed the deceased some 26 times. The deceased's cause of death was certified as "multiple stab wounds". The accused admitted to repeatedly stabbing the deceased with a knife. She intended to cause the multiple stab wounds. The wounds collectively (and three of the wounds individually) were sufficient in the ordinary course of nature to cause death.

6 The accused disputed the charge by relying on the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code.

The defence – diminished responsibility

7 Exception 7 to s 300 of the Penal Code (as was in force at the time of the alleged offence) provided that:

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

8 The accused bears the burden of proving the defence of diminished responsibility on a balance of probabilities: *Public Prosecutor v Juminem and*

another [2005] 4 SLR(R) 536 (“*Juminem*”) at [38]. To do so, the following three requirements must be satisfied (*Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 (“*Iskandar*”) at [79]):

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

The medical evidence

The defence’s medical evidence

9 The accused relied on the expert opinion of psychiatrist Dr Tommy Tan that at the time of the stabbing she was suffering from adjustment disorder with mixed anxiety and depressed mood (309.28, Diagnostic and Statistical Manual 5th Edition (“DSM-5”). Dr Tan clarified that this was essentially the same diagnosis as adjustment disorder with mixed anxiety and depressive reaction (International Classification of Diseases Revision 10 (“ICD-10”))¹ which he had also mentioned in his medical report.²

¹ Transcript, 1 December 2022, 11:9–28; 80:19–30.

² Exhibit D4 at para 79.

10 Dr Tan opined that the accused was in a dissociative state at the time of the stabbing: “Her mind was not conscious of what she was doing. She was not able to control her acts when she was stabbing [the deceased]. She was unable to remember she had stabbed [the deceased]. She only knew that she had stabbed [the deceased] after it had happened.”³

The prosecution’s medical evidence

11 The prosecution relied on the expert opinion of psychiatrist Dr Alias Lijo that the accused was not suffering from any mental illness at the time of the stabbing; in particular, she was not suffering from adjustment disorder (as Dr Tan had opined).

Review of the evidence

The diagnostic criteria for adjustment disorder

12 The prosecution disputed three of the five diagnostic criteria under DSM-5 for a diagnosis of adjustment disorder:

A: The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s).

B: These symptoms or behaviors are clinically significant, as evidenced by one or both of the following:

1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
2. Significant impairment in social, occupational, or other important areas of functioning.

...

³ Exhibit D4 at para 93.

D: The symptoms do not represent normal bereavement.

13 On Criterion A, paras 80–81 of Dr Tan’s report indicated that the deceased was the identifiable stressor: “At the beginning of the employment, [the accused] was happy to work ... [The accused] became very stressed by the employer’s mother when the latter came to stay in the house.”

14 In his testimony, however, Dr Tan said that the accused already had symptoms of adjustment disorder at the point in time she started working for Mr S.⁴

15 Dr Tan said that there were “many stressors”, including “the change in environment for her, the---the work conditions she has, change of country, lack of ability to communicate with the---language difficulties, social isolation”, besides “Difficulty getting along with the employer’s mother”.⁵ The accused encountered a change in environment (in relation to work conditions and country), language difficulties, and social isolation, when she came to Singapore on 5 January 2018, more than 4 months before she started working for Mr S on 10 May 2018. If those matters were identifiable stressors for the purpose of Criterion A of DSM-5, she should have developed emotional or behavioural symptoms in response within 3 months of the onset of the stressors, *ie*, before she started working for Mr S.

16 However, the accused said that since coming to Singapore, she had no issues interacting with people she had recently met, such as Mr S’s family and

⁴ Transcript, 1 December 2022, 72:11–73:2.

⁵ Transcript, 1 December 2022, 14:21–15:2.

her agents.⁶ She also said that she tried to be a good domestic helper with all three of her employers, Mr S being the third.⁷

17 On Criterion B, Dr Tan accepted that it is relevant to consider whether an ordinary person in the accused's position would have the same symptoms or not.⁸ In para 84 of his report, he said:

An ordinary adult would have difficulty coping with the stress of working for a demanding elderly person. [The accused] was an adolescent at that time. She was not a mature adult. She would be highly vulnerable in developing an adjustment disorder because of her immaturity. In addition, [the accused], from a less developed country, with language difficulties and in a foreign country with no social or family support would also make her very vulnerable to developing an adjustment disorder.

18 I accept that the accused was homesick, stressed, and sad about coming to Singapore to work, but not to a greater extent than an ordinary person in her position, leaving to one side the stabbing itself (which I discuss later). But for the stabbing, I would not be convinced that the accused suffered from “marked distress that is out of proportion to the severity or intensity of the stressor[s]” for the purposes of Criterion B.

19 Criterion B can also be satisfied where there is significant impairment in social, occupational, or other important areas of function. Dr Tan did not appear to suggest this in his report, but in his testimony, he sought to rely on Mr S's observation that the accused did not seem to be driven when she did housework, as a possible symptom of adjustment disorder.⁹

⁶ Transcript, 30 November 2022, pages 17–18.

⁷ Transcript, 30 November 2022, page 18.

⁸ Transcript, 1 December 2022, 15:3–12.

⁹ Transcript, 1 December 2022, pages 87–94.

20 However, Dr Tan admitted that he did not know the accused’s baseline socio-occupational performance, which would be a reference point for assessing whether the accused’s ability to do her job had been impaired because of stressor(s). Moreover, the evidence shows that the accused’s work performance had improved between 17 June and 25 June 2018.¹⁰ The evidence does not show that the accused suffered from significant impairment in social, occupational, or other important areas of function, because of stressor(s) – in particular the deceased.

21 In relation to Criterion D, the prosecution submitted that Dr Tan did not say how the accused’s self-reported symptoms differed from normal bereavement.¹¹ This case does not involve the accused coping with bereavement in the conventional sense of the loss of someone close. I have already noted that, in relation to Criterion B, Dr Tan accepted that for the purposes of a diagnosis of adjustment disorder, marked distress as a response to the stressor(s) must be different from that of an ordinary person in the same position; in the words of Criterion B: “out of proportion to the severity or intensity of the stressor” (see [17]–[18] above).

22 With that, I turn to consider the stabbing – what led to it, the stabbing itself, and its aftermath.

The stabbing

What led to the stabbing?

23 The defence’s case was:

¹⁰ Transcript, 1 December 2022, 91:13–30 (referring to Mr S’s evidence at Transcript, 6 January 2022, 57:17–58:6).

¹¹ Prosecution’s closing submissions (“PCS”) para 41(c).

- (a) the accused had been physically abused by the deceased; and
- (b) what triggered the accused to stab the deceased, was the deceased telling the accused “Tomorrow. You. Go. Agent” (or words to the effect that she would be sent back to the agent)¹² – the accused understood that as Mr S was already her third employer, if she were sent back to the agent then that would result in her being sent back to her home country in debt.

24 The prosecution did not challenge the accused’s evidence that the deceased had told her she would be sent back to the agent, but relied on this in submitting that the accused had deliberately stabbed the deceased:¹³

The killing itself was carried out with deliberation. The Accused admitted that she had reacted *in anger* to the Deceased telling her that she would be sent back to her agent. She grabbed a knife, walked over to the Deceased and observed that the Deceased was watching television and did not look at her. She then stabbed the Deceased multiple times.

25 The prosecution however disputed the accused’s evidence that the deceased had physically abused her.¹⁴

The accused’s versions of events

26 The accused gave radically different versions of events: at times saying that she had not stabbed the deceased, at times admitting that she had stabbed the deceased. At trial, the accused agreed (as set out in the statement of agreed

¹² Defence’s closing submissions (“DCS”) paras 14(a), (d); 81, 82, 88, 89, 102; Defence’s reply submissions paras 3, 27–32.

¹³ PCS para 56.

¹⁴ PCS paras 29–30.

facts) that she had stabbed the deceased with a knife multiple times, until the deceased stopped moving.¹⁵

(1) 25 June 2018 – accused’s first statement

27 In her first statement to the police,¹⁶ the accused said: “I did not kill the old lady”; according to her, it was two dark-skinned men (whom she described in some detail) who had killed the deceased when the accused had left the flat to throw rubbish.

(2) 26 June 2018 – accused’s second statement

28 In her second statement to the police, in response to the charge of murder, the accused said “I really did not kill the old lady. That was why I went to the agency to get help. I cannot admit to this charge as I did not kill her.”¹⁷

(3) 29 June 2018 – accused’s third statement

29 In her third statement to the police,¹⁸ however, the accused admitted that she *had* stabbed the deceased. She said that the deceased had said, in a mixture of English and another language, that the accused would be sent back to the agent; the accused was “very angry” when she heard that, and she was also thinking of how the deceased had previously used a hot flat pan to hit her arm. The accused said that thinking about all this really made her very angry, and she took a knife and stabbed the deceased. She said that during the stabbing, the deceased had tried to push her back but could not. Notably, the accused did not

¹⁵ SOAF, para 7.

¹⁶ P470, AB 484–488.

¹⁷ P471, AB 495.

¹⁸ P469, AB 471–477.

say in her third statement that she was not conscious of stabbing the deceased, or that she could not control her acts at the time – points which she would later rely on in her defence.

(4) 30 June 2018 – accused’s fourth statement

30 In her fourth statement to the police,¹⁹ the accused said that the version in her third statement (that she had stabbed the deceased) was what had happened. She said that she had given a different version in her first statement (denying the stabbing) because she was scared at the beginning when she was caught by the police. She said she decided to tell the truth as she was a Buddhist and she had prayed in her heart after she was caught; she said that she had done wrong, and that the officer who spoke with her on 29 June 2018 had told her to tell the truth; that is why she decided to tell the truth.

31 The accused also elaborated on the events of 25 June 2018:

- (a) she had hit something hard under newspapers placed on a small table, it sounded like something heavy had dropped on the deceased’s foot, and the deceased screamed ‘ahhhh!’;
- (b) the accused apologised to the deceased;
- (c) the deceased then hit the accused on the right side of her head three times, grabbed her hair, and slapped her hard once on each cheek; and

¹⁹ P481, AB 530–539.

(d) the accused said that she started to tear as she felt sad and very angry at the deceased for hitting her, and it was not the first time that the deceased had hit her.

32 The accused said that thereafter the deceased also knocked the accused once on her head (but it was not a hard knock) when the accused missed the deceased's instruction to take a pair of scissors and a knife from the kitchen; the deceased then used the knife to scrape wax off an altar.

33 The accused said:

(a) she noticed that one of the prayer accessories was about to get stuck when the deceased was pushing the altar's retractable tray back to the altar, and she called out to the deceased;

(b) the deceased shouted, "stop!" and pointed the closed scissors at her neck, with the tip of the scissors touching the right of her neck; the scissors had a rounded tip and the deceased did not push the scissors into her neck; and

(c) the deceased then saw what the accused wanted to alert her to, and she took the prayer accessory from the tray and placed it on the altar top.

34 The accused said that the deceased then lay down to watch the television, and while doing so the deceased said "Tomorrow. You. Go. Agent". The accused said that when she heard that she felt "very angry" and also very 'tight' – she grabbed the knife and walked over to the sofa; she was shaking and did not know how to describe the feeling she had then; when she reached the deceased, she stabbed her (and she demonstrated how she swung her clenched

right fist in a vertical swinging motion from her elbow). The accused said she continued to stab the deceased until the deceased stopped moving.

35 The accused also provided details such as how the deceased's dress had flown up, and how there was blood on the deceased's body, the knife, and the accused's right hand.

(5) 1 July 2018 – accused's fifth statement

36 In the accused's fifth statement recorded on 1 July 2018,²⁰ she said that the deceased had physically abused her:

(a) some days after the deceased came to stay with Mr S and his family, the deceased started to use her knuckles to knock either on the accused's head or her back whenever the accused did not understand what the deceased wanted her to do – the accused said this knocking was rather painful at times;

(b) on average the accused would get 2–3 knocks a day, usually on her head; there were times where she would be knocked on her back, and those would be more painful – but at the beginning, she was not angry with those knocks;

(c) some time later, the deceased started to use things to hit the accused (rather than using her hand), such as a wooden ladle or a long steel ladle;

(d) on one occasion, when the accused was massaging the deceased, the deceased used her right hand to slap the accused's cheek, and it was

²⁰ P483, AB 545–551.

painful – the accused understood from what the deceased said that the deceased found the massage painful; the accused said she started to get angry with the deceased from that time, especially since the deceased had used her weak hand which was being massaged, to slap the accused;

(e) on another occasion, the accused turned on the stove wrongly, resulting in a sudden burst of flames that burnt the deceased's hand slightly; the deceased got angry in response and pulled the accused's right hand close to the flames which caused the accused's hand to be burned;

(f) on yet another occasion, the accused was cutting the deceased's toenails, during which she hurt the deceased; in response, the deceased kicked the accused's stomach with her right foot, causing the accused to fall backwards – the accused said that her stomach hurt for the next two days;

(g) some two weeks before the stabbing, when the accused opened a spice box beside the deceased, one of the covers of the box fell and hit the deceased's foot; in response, the deceased picked up a hot flat pan on the stove and used it to hit the accused, causing a burn on the accused's right forearm;

(h) the accused got very angry with the deceased because of all the pain that she had caused the accused – the accused had tried to be nice to the deceased, greet her, massage her, and yet the deceased did those things to the accused; when the deceased slapped the accused during the massage, the accused felt that despite everything she did for the deceased, the deceased did not love her; and

(i) that is why, on the day of the stabbing, when the deceased slapped the accused and nagged at her, the accused was feeling very angry inside; when the deceased said, “you go back agent tomorrow”, the accused was so angry she was shaking; she did not know what happened in her head – she grabbed the knife and could not see anything anymore, her head was very heavy, shaking, and yet she was afraid; she did not know how or why, she just went forward and stabbed the deceased.

(6) 2 July 2018 – accused’s sixth statement

37 In the accused’s sixth statement recorded on 2 July 2018,²¹ she said:

(a) she had been thinking in her head about all the things that the deceased had done to her, and all these things went haywire in her head;²²

(b) she did not decide to stab the deceased, she did not intend to kill the deceased in her head at that time, she did not know what happened in her head and just grabbed the knife;²³

(c) the deceased did not scream for very long;²⁴ and

(d) only one of the deceased’s hands was moving (and the accused gestured with her right arm with the elbow slightly bent in a vertical swinging motion from the shoulder).²⁵

²¹ P484, AB 552.

²² P484, AB 552, para 69.

²³ P484, AB 552, para 71.

²⁴ P484, AB 552, para 72.

²⁵ P484, AB 552, para 73.

(7) What the accused told Dr Lijo for his first report

38 Dr Lijo examined the accused on three occasions, on 17, 20 and 27 July 2018.

39 By then, the accused had admitted to the police that she had stabbed the deceased, in her statements of 29 and 30 June, and 1 and 2 July 2018; she had also visited the scene of the stabbing on 3 July 2018, and indicated where she and the deceased were when she stabbed the deceased.²⁶

40 In speaking with Dr Lijo, however, the accused reverted to denying that she had stabbed the deceased, again blaming two dark-skinned men for the deceased's death, as she had in her first statement of 25 June 2018 (which was untrue, as she acknowledged in her subsequent statements to the police).

41 Dr Lijo records the accused's account of events as follows:²⁷

She was aware of the charge against her. She denied committing the alleged offence and stated that she admitted committing the offence as the investigation officer told her that she will be given a death penalty if she did not agree to the charge. She stated that she considered the victim like a mother, even though the victim was physically abusive towards her and hit her on multiple occasions. She also alleged that the victim had burned her hands on two occasions[s] but shared that she had no grudge against the victim. She stated that on the day of alleged offence, at around 11 am, she went to the centralized rubbish chute outside the employer's apartment to throw rubbish. At that time victim was at the apartment and when she came back, she saw two 'dark skinned' men standing inside the apartment. She reported that she was scared after seeing the two men and hence sat near the centralized chute for twenty minutes. When she came back to the apartment, the men were not there and found the victim lying on a sofa with blood on the floor...

²⁶ CH-PS 63, AB 497–529.

²⁷ P450, para 12.

42 The accused's story about two dark-skinned men having caused the death of the deceased was untrue; so too was her attempt to blame her admission of the stabbing on the police having threatened her with the death penalty. In the statement of agreed facts, the accused agreed that her statement of 29 June 2018 (in which she admitted to the stabbing, and said that her story about the two dark-skinned men was untrue) was one of the statements recorded and given voluntarily by her, and that no threat, inducement, or promise was made to her at any time before or during the recording of the statements.

43 Dr Lijo's opinion as expressed in his first report dated 30 July 2018, was that the accused had no mental illness, and was not of unsound mind at the time of the alleged offence.

(8) What the accused told Dr Tan for his report

44 Dr Tan examined the accused on four occasions from March–September 2020, and gave a report dated 12 September 2020.

45 The accused told Dr Tan that the deceased beat her with utensils such as a small frying pan or ladle on her head or back, and with her knuckles and palm; she was beaten many times through the day, almost every day. The accused also mentioned that she was kicked in the chest when she was cutting the deceased's toenails, was burned on her right arm by the deceased pushing a hot pan against her, and was also cut by a knife when she was cutting onions and the deceased pulled the knife away.

46 The accused said that she had caused something to fall on the deceased's foot, in response to which the deceased hit her on the back of her head with an object, pulled her hair, and slapped her face.

47 The accused said that she saw something stuck in the drawer of the altar and wanted to tell the deceased about it, but the deceased shouted at her and then took scissors and pointed them at her neck while scolding her. The accused said, “fear overcame her” and “don’t know what happened”, she was fearful that she was going to die, and she thought the deceased was going to kill her – but this is quite different from what she told the police in her statement dated 30 June 2018 ([30] above).

48 The accused said that the deceased told her, “Tomorrow, I’m going to send you agency. Don’t work here.” The accused said that she was in a daze; she picked up the knife, but “my mind was blank” (in her native language, “nothing in my head”), and “I cannot recall what happened.” She told Dr Tan that she then realised something was wrong – “I think I stabbed her”. This account is also quite different from the detailed account she had given to the police about her stabbing of the deceased.

49 Dr Tan’s opinion was that the accused had mixed anxiety and depressive reaction (under ICD–10) or adjustment disorder with mixed anxiety and depressed mood (under DSM–5) at the time of the alleged offence.²⁸ He added that the accused had described that she was not able to remember exactly what happened after the deceased said that she was sending her back to the agency the next day; she remembered she was “blank” in her mind; she did not realise that she had stabbed the deceased, and only realised what she had done after she had stabbed the deceased.²⁹

50 Dr Tan concluded:

²⁸ Exhibit D4 at para 79.

²⁹ Exhibit D4 at para 88.

She was in a dissociative state at the time of the alleged offence. Her mind was not conscious of what she was doing. She was not able to control her acts when she was stabbing [the deceased]. She was unable to remember she had stabbed [the deceased]. She only knew that she had stabbed [the deceased] after it had happened.

(9) What the accused told Dr Lijo for his second report

51 Dr Lijo gave a second report dated 16 March 2021. After his first report, he interviewed the accused on three occasions between December 2020 and February 2021. He also considered Dr Tan’s report of 12 September 2020. He noted that the accused had given different versions of what happened – one version (what the accused told the police on 29 June 2018) was that she had stabbed the deceased several times with a knife as she was very angry with the deceased because the deceased said that she would be sent back to her agent. The accused first gave Dr Lijo this explanation: she “might have told the investigation officer about what likely could have happened at the time of alleged offence”, but subsequently she accepted that she had told the investigation officer in June 2018 that she had stabbed the victim – she claimed that she said so because she believed that by telling the investigation officer that she stabbed the victim she could get a lighter sentence.³⁰

52 Further, the accused confirmed that what she had told Dr Lijo in 2018 (that she did not stab the deceased, and two dark-skinned men had caused the deceased’s death) was untrue – she said she had lied to him in 2018 so that she would not be punished and could go back to her home country; she said sorry for lying to Dr Lijo in 2018.³¹

³⁰ P450A at para 16.

³¹ P450A at para 15.

53 Dr Lijo disagreed with Dr Tan's diagnosis of the accused. He said that Dr Tan's diagnosis was solely based on information given by the accused, and for such diagnoses, apart from the mood and anxiety symptoms, there should be impairment in social, occupational, or other important areas of functioning, which was lacking in this case.³²

54 Dr Lijo maintained that the accused had no mental illness – her reported symptoms of feeling sad at night when she thought about her family, and feeling stressed when around the deceased due to the alleged abuse, did not amount to mental illness. They were instead normal and expected reactions of being away from her family, and to the alleged abuse she faced from the deceased.³³

55 Further, Dr Lijo disagreed with Dr Tan about the accused being in a dissociative state at the time of the alleged offence – that was based on the information given by the accused that she did not know she had stabbed the deceased, until after that had happened. But in her statements to the police on 29 and 30 June 2018, she told the police that she had stabbed the deceased several times, and described the deceased's reactions at the time of the stabbing.

The aftermath of the stabbing

56 After stabbing the deceased, the accused ransacked one of the bedrooms in the flat, broke the lock of a locked cupboard in that bedroom and retrieved her belongings which were kept in an envelope in that cupboard. She went to the kitchen to wash the knife she had used to stab the deceased, and left the knife there. She changed into a dress and took a bag belonging to her. She also took

³² P450A at para 18(b).

³³ P450A at para 18(a).

some money and an EZ-link card from on top of the microwave oven in the kitchen. It was not disputed that theft was not a motive for the stabbing.

57 The accused then went to her maid agency, and asked for her passport, but she left when she heard that the staff were about to call her employer.

58 Over the next five hours, the accused then wandered around parts of Singapore, by bus, by MRT, and on foot; she bought bottles of mineral water, and food at a hawker centre which she ate. Finally, she took a taxi back to the maid agency, where she was arrested.

59 The accused left behind in the taxi a plastic bag containing cash. The taxi driver located the maid agency and tried to return the bag to the accused, but the accused said that the bag did not belong to her. However, forensic examination found the bag and four currency notes to be stained with her blood.

The accused's testimony at trial

60 In her testimony at trial, the accused maintained that she did not know what was happening when she stabbed the deceased, and that she only realised after the stabbing, that the knife was in her hand and the deceased was on the sofa with blood.³⁴

61 This testimony contrasted with the details given in her statements to the police. In cross-examination, she was reminded of the statements she had given to the police, and what she had described during the scene visit. She then

³⁴ Transcript, 23 September 2022, 27:1–3.

conceded that she was able to recall what happened during the stabbing as she had told the police.³⁵

Findings

62 I accept that the deceased had hit the accused (to get her attention, or to reprimand her), and that the deceased had also retaliated when the accused had accidentally hurt the deceased. I do not believe that the accused would have stabbed the deceased if there were just an isolated statement by the deceased, on the day in question, that the accused would be sent back to the agent. Rather, that statement was made after a period in which the deceased had scolded, hit, and hurt the accused.

63 But for the threat to send the accused back to the agent, however, the accused would not have stabbed the deceased. From what the accused said, the deceased's treatment of her would not, in itself, have caused her to stab the deceased. The accused did not report the deceased's treatment of her to her employer or his family members, or to her agent, or to her family. It seems that she was willing to tolerate such treatment, although she was hurt, sad, and felt unappreciated.

64 The accused however feared being sent back to the agent (and consequently back to her home country in debt), and when the deceased threatened to do so, that triggered the stabbing. As the accused told the police, she was "very angry" when the deceased said that; she took a knife, went to the deceased, and stabbed her.

³⁵ Transcript, 30 November 2022, 24:17 to 30:11, particularly at 26:15–29.

65 I do not accept that the accused was in a dissociative state at the time of the stabbing. From what she told the police, she reacted in anger at the deceased, and she was aware of what she was doing. Indeed, she described the stabbing in detail. I do not accept that she was not conscious of what she was doing.

66 The accused’s behaviour in the aftermath of the stabbing is also inconsistent with her being in a dissociative state – she retrieved her belongings, washed the knife, changed, tried to get her passport from the maid agency, and denied that the bag and money she left in the taxi (which were stained with her blood) belonged to her.

67 Turning to the elements of the defence of diminished responsibility, I find that for the first limb (abnormality of mind) the accused was not suffering from an abnormality of mind at the time of stabbing. An abnormality of mind “means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal”: *Iskandar* at [81], citing *R v Byrne* [1960] 2 QB 396 at 403.

68 I prefer Dr Lijo’s medical opinion to that of Dr Tan’s – that the accused’s reported symptoms of feeling sad and stressed were normal and expected reactions to her situation. I find Dr Lijo’s opinion to be more consonant with the rest of the evidence, including what the accused admitted to the police.

69 On the second limb (that the abnormality of mind was caused by a cause such as disease, *ie*, mental illness), I find that the accused was not suffering from a mental illness at the time of the stabbing: in particular, she was not suffering from adjustment disorder (as diagnosed by Dr Tan).

70 For the purposes of Criterion B in DSM-5, on the evidence, the accused was not suffering from marked distress out of proportion to the severity or intensity of the stressor (the deceased), nor did she suffer from significant impairment in social, occupational, or other important areas of function.

71 The accused's decision to stab the deceased was an emotional, irrational one. But that, *per se*, does not mean that the accused was suffering from an abnormality of mind caused by mental illness. As the accused told the police, she stabbed the deceased because she was very angry at the deceased for threatening to send her back to the agent. She then tried to get her passport from the agent – presumably to leave the country. When she was arrested, she denied having stabbed the deceased, seeking to blame that on two fictitious dark-skinned men. Evidently, the accused thought that she might be able to escape responsibility if that lie were believed; and she would also have removed the cause of her concern (the deceased, the one who had threatened to send her back to the agent).

72 On the third limb (that the abnormality of mind substantially impaired her mental responsibility for her acts and omissions in causing the deceased's death), I find that the accused's mental responsibility for causing the deceased's death was not substantially impaired.

73 The defence relied on the case of *Juminem* where two foreign domestic workers, aged 18 and 15, successfully relied on the defence of diminished responsibility. In that case, the High Court found that they both suffered from a depressive disorder at the time of the offence which amounted to an abnormality of the mind which had significantly affected and impaired their judgment.

74 The court accepted that persons suffering from a depressive illness did not necessarily lose their capacity to think or the ability to carry out complex tasks (at [32]) and held that the disaffected mood drew the first accused to a course of action that she would not otherwise have followed – she was unable to distinguish or appreciate irrational urges (such as killing) from more rational ones (such as complaining to the maid agency). Likewise, the court found that the second accused, who also had low intellectual capacity, had her ability to rationalise or will herself out of the crime impaired (at [37]).

75 In considering *Juminem*, I am mindful of the observations by the Court of Appeal in *Nagaenthiran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 at [27] that “past cases will have little precedential value when it comes to establishing whether a particular medical condition is an abnormality of mind within the meaning of the first limb...the question is ultimately one for the finder of fact to answer, having regard to all the surrounding circumstances of the offender’s conduct and his offence.”

76 One distinction between *Juminem* and the present case, is that in *Juminem* the court found that the accused persons were impaired in not being able to distinguish or appreciate irrational urges (such as killing) from more rational ones, whereas in the present case the contention was that the accused was impaired by being in a dissociative state – which Dr Tan explained as, “your action is different from what your thoughts are”.³⁶ Dr Tan gave the following example of a dissociative state: a person is driving to a new destination, and is supposed to make a turn, but as a matter of habit just continues in the same direction as he normally does (a layman might call that absent-mindedness).

³⁶ Transcript, 1 December 2022, 114:14–26.

That is quite different from the impairment in *Juminem*, which was about being able to distinguish or appreciate irrational actions from rational ones.

77 In his report, Dr Tan said,³⁷

Her mind was not conscious of what she was doing. She was not able to control her acts when she was stabbing [the deceased]. She was unable to remember she had stabbed [the deceased]. She only knew that she had stabbed [the deceased] after it had happened.

78 When Dr Tan mentioned lack of control there, it was in the context of the accused not being conscious of what she was doing: he was referring to a dissociation between thoughts and actions, rather than any impairment in the decision-making process of choosing between two courses of action.

79 On the evidence, however, I find (contrary to what the accused told Dr Tan) that the accused was conscious of stabbing the deceased – she did not only know that she had stabbed the deceased after that had happened. Moreover, the accused was able to remember details of the stabbing, and thus able to describe the stabbing to the police. That undermines Dr Tan’s conclusion that the accused’s mind was not conscious of what she was doing. Indeed, the accused mentioned to the police not only *how* she had stabbed the deceased, but also *why* she had stabbed the deceased – because the deceased had threatened to send her back to the agent, and that had made the accused very angry.

80 The opinion in Dr Tan’s report, that the accused was unable to control her acts, was premised on the accused not knowing what she was doing at the time. In his testimony, however, Dr Tan accepted that it was possible that she

³⁷ Exhibit D4 at para 93.

knew exactly what she was doing,³⁸ but he maintained nevertheless that even if that were the case, “she knows what she’s doing but she’s unable to control her actions”.³⁹ In that scenario, however, the accused would not be in a dissociative state – there would be no dissociation between her thoughts and her actions. As for Dr Tan’s assertion that she would still be unable to control her actions (even if she knew what she was doing), Dr Tan did not explain how, if at all, adjustment disorder would lead to that. That was not the premise of his report in the first place, which was based on the accused telling him that she only knew that she had stabbed the deceased after it had happened – but that is a version of events that I do not accept.

81 Moreover, the accused only relied on the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code to resist the charge, *ie*, that what she did was culpable homicide, not murder. The Exceptions to s 300 stipulate when culpable homicide is not murder; the Exceptions are not a defence to culpable homicide. From what the accused admitted to the police, she had caused the deceased’s death by doing an act with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death – that was culpable homicide if not murder, and the only issue was whether she could rely on the defence of diminished responsibility such that she had only committed culpable homicide, not murder. I did not understand it to be the accused’s case that she had not intended to stab the deceased – on the contrary, the accused contended that she was triggered to stab the deceased by the deceased saying, “Tomorrow. You. Go. Agent.”⁴⁰ If, however, the accused were denying the element of intention, I find on the evidence that she *had*

³⁸ Transcript, 1 December 2022, pages 81–82.

³⁹ Transcript, 1 December 2022, 99:4–100:5, at 99:30.

⁴⁰ DCS para 102.

intended to stab the deceased. It was not disputed that the stab wounds were sufficient in the ordinary course of nature to cause death.

Conclusion

82 For the above reasons, I find that the accused has failed to establish the defence of diminished responsibility. That was the sole basis on which the accused resisted the charge of murder, the elements of which are established on the evidence.

83 Accordingly, I convict the accused of murder, as charged. I will address the question of sentence in due course.

Andre Maniam
Judge of the High Court

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