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

[2022] SGHC 295

Criminal Case No 21 of 2022

Between

Public Prosecutor

And

Mohamed Aliff bin Mohamed Yusoff

GROUNDS OF DECISION

[Criminal Law — Offences — Murder]
[Criminal Procedure and Sentencing — Sentencing]

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Public Prosecutor
v
Mohamed Aliff bin Mohamed Yusoff

[2022] SGHC 295

General Division of the High Court — Criminal Case No 21 of 2022
Mavis Chionh Sze Chyi J
5–8, 12–14 April,13 July, 11 August 2022

24 November 2022

Mavis Chionh Sze Chyi J:

Introduction

1 The accused, Mohamed Aliff bin Mohamed Yusoff ("the accused"), claimed trial to a charge of murder under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). The alleged victim was 9-month-old Izz Fayyaz Zayani bin Ahmad ("Izz"), the son of the accused's then girlfriend Nadiah bite Abdul Jalil ("Nadiah").

2 The Prosecution's case was that the accused had pushed Izz's head against the wooden floorboard in the rear cabin of his van twice, thereby inflicting blunt force trauma to Izz's head which resulted in fatal brain injuries. The Prosecution contended that the accused had done so intentionally. The accused's defence, on the other hand, was that Izz's death had been an accident.

According to the case for the Defence which was filed on his behalf,[1] at the material time, the accused and Izz had been next to the accused's van: the accused had been holding Izz in his right arm while holding a plastic bag and a packet of "kitchen tissue" in his left hand. As the accused was trying to close the van door with his left hand, Izz "fidgeted and fell out from [his] right arm". According to the accused, Izz fell "head down first, hitting the wooden floorboard of the van, then the edge near to the door of the van and finally falling to the ground".

3 Following a seven-day trial, I convicted the accused of the charge of murder under s 300(*c*) of the PC. Having heard submissions on sentencing from both the Prosecution and the Defence, I sentenced the accused to a term of life imprisonment and 15 strokes of the cane.

4 As the accused has filed an appeal against both his conviction and sentence, I set out below the reasons for my decision.

The charge

5 The accused was charged as follows:

> That you, MOHAMED ALIFF BIN MOHAMED YUSOFF, sometime between 10.00 pm on 7 November 2019 and 12.15 a.m. on 8 November 2019, at the multi-storey car-park located at Block 840A Yishun Street 81, Singapore, did commit murder by causing the death of one Izz Fayyaz Zayani Bin Ahmad (Male, 9 months old), and you have thereby committed an offence

[1] Exhibit P 95 at [6].

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

The agreed facts

Background

6 The following facts were not disputed. The accused got to know Nadiah through Instagram sometime in 2017 or 2018, and became romantically involved with her in September or October 2019.[2]

7 Izz was Nadiah's son from her previous marriage.[3] He was born in January 2019.[4]

Events on 7 November 2019

8 On the evening of 7 November 2019, the accused drove Nadiah and Izz in his van GBE 4012P ("the van") to Wisteria Mall, where they had dinner.[5] This was a van purchased by the accused, Nadiah and her brother Ahmad Faris bin Abdul Jalil ("Faris") for their delivery business.

9 During the dinner, Izz accidentally spilled Nadiah's drink. The accused carried Izz away to clean him up while Nadiah continued with her meal. Nadiah subsequently went to the nursing room to clean Izz's milk bottle. While Nadiah was doing this, the accused left the nursing room with Izz and told her that he

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2 Agreed Statement of Facts ("ASOF") at para 4.

3 Prosecution's End of Trial Submissions at para 5.

4 ASOF at para 2.

5 ASOF at para 5.

would meet her at the van. After washing Izz's milk bottle, Nadiah found the accused and Izz in the van at the Wisteria Mall carpark.[6]

10 On leaving the Wisteria Mall carpark, the accused drove to Nadiah's mother's flat at Choa Chu Kang ("the Choa Chu Kang flat"). He volunteered to bring Izz to his house in Yishun ("the Yishun home") and to take care of him for the night. Nadiah agreed to this arrangement as she was due at work the next day and would not be able to look after Izz while at work. She intended to stay over at Faris's flat in Jurong East ("the Jurong East flat") as it was closer to the location where she would need to report for work the next day.[7]

11 The three of them arrived at Choa Chu Kang sometime after 9.00 p.m. Nadiah went upstairs to her mother's flat to collect her personal belongings and to pack essential items for Izz in a baby bag. She then handed the baby bag to the accused before taking a private hire vehicle to the Jurong East flat.[8]

12 According to the accused's statements to the police, after being left alone with Izz, he drove the van to a multistorey carpark in Yishun ("the Yishun MSCP") and parked there at about 10.08 p.m. Izz was seated in the front passenger seat during the journey. While the accused was still at the MSCP, he exchanged text messages with his father via WhatsApp at about 10.51 p.m. on whether it was convenient for him to bring Izz to his father's house. After the WhatsApp exchange with his father, the accused left Izz in the rear cabin of the locked van while he made a trip to a nearby Sheng Shiong supermarket. This

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6 ASOF at para 5.

7 ASOF at para 6.

8 ASOF at para 6.

was at11.02 p.m. At the supermarket, the accused purchased some items before returning to the van.[9]

13 Sometime after his return to the van, the accused called Nadiah several times. Nadiah did not pick up these calls but subsequently returned his call sometime close to midnight on 8 November 2019. The accused asked Nadiah to meet him, telling her that he had something to tell her.[10] Nadiah agreed and took a private hire vehicle to meet him.

Meeting with the accused on 8 November 2019

14 Nadiah met the accused at the main road near Strategy Building (which was close to Jurong East MRT station). After driving off with Nadiah in the front passenger seat, the accused held her hand and repeatedly told her that he did not want her to leave him. At some point, he stopped the van and went to the rear cabin of the van with Nadiah. Izz was then lying in a supine position on the floorboard of the rear cabin. Nadiah put on the baby carrier. She then returned to the front passenger seat, carrying Izz in the baby carrier, whereupon the accused drove off. [11]

15 As he drove, the accused told Nadiah that he had been carrying baby items in one hand and Izz in his other arm whilst trying to close the door of the van. According to him, Izz suddenly fidgeted and fell headfirst onto the floorboard of the van, bounced, and hit his head again on the footrest of the van, before finally falling onto the carpark floor.[12]

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9 ASOF at para 7.

10 ASOF at para 7.

11 ASOF at para 8.

12 ASOF at para 9.

16 The accused eventually agreed to bring Izz to the hospital,[13] but told Nadiah that they should tell the hospital the following: the accused was carrying Izz's essentials in one hand and Izz on his other hand while trying to close the van door; Izz suddenly fidgeted and fell onto the floorboard of the van, bounced, and hit his head a second time on the footstep of the van before falling onto the floor headfirst; the accused called Nadiah and that was why he did not call for an ambulance; Izz was still warm when Nadiah arrived, and it was when he turned cold that they proceeded to the hospital.

17 After Nadiah agreed to relate the above-mentioned sequence of events to the hospital, the accused drove to the National University Hospital ("NUH").

Arrival at National University Hospital ("NUH")

18 Upon reaching NUH, the accused parked his van at the NUH basement carpark. As they were walking to the Accident and Emergency Department ("A&E"), he told Nadiah that he wanted to discard one of his mobile phones. Nadiah sat at the NUH Kopitiam while the accused went to look for a place where he could discard the phone, but eventually she started walking towards the AEE. The accused then told her they should make a detour to the bus-stop area outside the A&E; and it was as they were nearing this bus-stop that the accused threw his mobile phone into the bushes. Thereafter, they proceeded to the A&E, where Nadiah fainted and Izz was handed over to medical personnel. By then, it was about 4.20 a.m. on 8 November 2019. Izz was pronounced dead a short while later at 4.30 a.m.[14]

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13 ASOF at para 10.

14 ASOF at para 11.

Ensuing police investigations and arrest

19 Senior Staff Sergeant Lim Kim Huat ("SSSgt Lim Kim Huat") and his partner were despatched to NUH to attend to the case. They arrived at the A&E at 5.03 a.m. There, SSSgt Lim ascertained that the deceased was Izz, and that he had been pronounced dead at 4.30 a.m. after having been brought to NUH by Nadiah and the accused. SSSgt Lim then interviewed the accused who related to him the following sequence of events: the accused had been holding on to Izz with one hand while packing some items, and Izz had struggled, falling out of his arm onto the floorboard of the van before hitting the ground. The accused told SSSgt Lim that he had met up with Nadiah after Izz's fall, and that they had decided to bring Izz to NUH after he lost consciousness. The accused also claimed that he had performed CPR on Izz prior to arriving at NUH.[15]

20 After interviewing the accused, SSSgt Lim reported his findings to Assistant Superintendent Chen Shunli ("ASP Jason"). ASP Jason proceeded to NUH with Senior Staff Sergeant Abu Hamid bin Abu Shama ("SSSgt Abu Hamid") and met up with SSSgt Lim Kim Huat. ASP Jason then interviewed the accused who gave an account of events similar to the account he had given SSSgt Lim.[16]

21 At about 12.23 p.m. on 8 November 2019, the accused was escorted back to Woodlands Police Division Headquarters ("Woodlands Police") to assist with investigations into Izz's death. From Woodlands Police, he was next escorted to Police Cantonment Complex ("PCC") and handed over to the Special Investigation Section of the Criminal Investigation Department at about

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15 ASOF at para 13.

16 ASOF at paras 12–14.

3.50 p.m. He was subsequently placed under arrest at PCC in connection with Izz's death.[17]

The Prosecution's case

22 As noted at [2], the Prosecution's case[18] was that the accused had inflicted blunt force trauma on Izz's head by intentionally pushing or slamming Izz's head against the floorboard of the van twice. This caused Izz to sustain traumatic intracranial hemorrhage which was sufficient in the ordinary course of nature to cause death.

The Defence's case

23 As I also noted at the outset (at [2]), the Defence denied that Izz's death was caused by an intentional act on the accused's part. According to the case which the Defence ran at trial[19], the accused had left Izz in the rear cabin of the van – which was then parked in a multi-storey carpark – while he visited a nearby supermarket. On returning to the van, the accused had opened the van door and picked Izz up. He then held Izz in his right arm while holding a plastic bag in his left hand. As he was trying to close the van door, Izz fidgeted, fell out of his arm onto the floorboard of the van, and then onto the footrest of the van, before finally falling on the ground outside the van.

The evidence adduced

24 I now summarise below the evidence adduced at trial.

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17 ASOF at para 15.

18 Prosecution's Opening Address at paras 1–2; Prosecution's End of Trial Submissions at paras 2 and 19.

19 Case for the Defence filed 31 January 2022 at para 6.

Witnesses called by the Prosecution

SSSgt Lim Kim Huat

25 SSSgt Lim Kim Huat produced the body-worn camera ("BWC") footage of his interview of the accused at NUH at about 5.27 a.m.[20] In his conditioned statement, SSSgt Lim Kim Huat recalled that during the interview, the accused had said that Izz "struggled and fell onto the floorboard of the motor van".[21] The accused also told SSSgt Lim Kim Huat that Izz had been responsive following the fall; that he (the accused) had contacted Izz's mother and met up with her; and that the two of them had "monitored" Izz's condition before eventually deciding to bring him to NUH when he "lost consciousness".[22]

26 In cross-examination at trial, the Defence contended that the accused had used the expression "fidgeted" and not "struggled". In response, SSSgt Lim Kim Huat clarified that the accused had said that Izz "wriggled and fell off": SSSgt Lim Kim Huat had written it down as "struggled", as he felt that the two words had "almost same meaning". In any event, as SSSgt Lim Kim Huat explained, he had been conducting only a preliminary interview with the accused, not a statement recording.[23]

SSSgt Abu Hamid bin Abu Shama ("SSSgt Abu Hamid")

27 SSSgt Abu Hamid accompanied ASP Jason to NUH following a call from SSSgt Lim Kim Huat.[24] After the accused was interviewed by ASP Jason,

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20 Statement of SSSgt Lim Kim Huat at Agreed Bundle ("AB") pp 118–119.

21 Statement of SSSgt Lim Kim Huat at AB p 118 para 5.

22 Statement of SSSgt Lim Kim Huat at AB p 118 para 5.

23 Transcript of 5 April 2022 p 76 ln 8 to ln 27.

24 Statement of SSSgt Abu Hamid bin Abu Shama at AB pp 123 para 3.

SSSgt Abu Hamid recorded a statement from the accused from about 6.15 a.m. to about 6.50 a.m. under s 22 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). He asked the accused questions in Malay and the accused replied in Malay. SSSgt Abu Hamid then recorded the answers in English.[25]

ASP Chen Shun Li ("ASP Jason")

28 In his conditioned statement, ASP Jason stated that as the incident had taken place within the jurisdiction of Woodlands Police Division, the case was referred to Woodlands Police Division.[26] He stated that he had interviewed the accused upon arriving at NUH together with SSSgt Abu Hamid at about 5.50 am on 8 November 2019. The accused told ASP Jason that he had been "packing [Izz's] items inside his motor van" while "holding onto [Izz] with one arm". According to the accused, Izz had "struggled and fell onto the floorboard of the motor van".[27] The accused also stated that Izz had been responsive following the fall; that he (the accused) had contacted Izz's mother and met up with her; and that they had "observed" Izz's condition before eventually deciding to bring him to NUH when he "lost consciousness".

29 In cross-examination at trial, ASP Jason was questioned on his use of the word "struggled" instead of "fidgeted". He stated that to the best of his memory, the word "struggled" was what the accused had used at the time.[28]

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25 Statement of SSSgt Abu Hamid bin Abu Shama at AB pp 124 para 5.

26 Statement of ASP Chen Shunli at AB p 122 para 7.

27 Statement of ASP Chen Shunli at AB pp 121–122 para 5.

28 Transcript of 5 April 2022 p 60 ln 21 to p 61 ln 4.

ASP Ng Liang Jie ("ASP Ng")

30 ASP Ng is a Senior Investigation Officer with the Woodlands Police Division. The case of Izz's death was referred to him on 8 November 2019 at about 6.20 a.m. He contacted SSI Mazlan bin Shariff ("SSI Mazlan"), the Duty Officer from the Special Investigation Section of the Criminal Investigation Department ("CID")[29] as the case was a "sensitive" one involving "injuries on the baby".[30] At about 8.35 a.m. on 8 November 2019, ASP Ng arrived at NUH to take over the case from ASP Jason, and he interviewed the accused in the A&E.[31]

31 At about 12.23 p.m., ASP Ng, together with ASP Tan Teng Hong Colin and Staff Sergeant Lim Wei, left NUH with the accused for Woodlands Police Station. They arrived at Woodlands Police Station at about 12.55 p.m. and brought the accused to Interview Room 2. At about 1.05 p.m., SSI Mazlan commenced his interview with the accused inside the interview room while ASP Ng stood guard. The interview, which was conducted in Malay, concluded at 1.55 p.m.[32]

ASP Ang Ghim Sing ("ASP Ang")

32 ASP Ang of CID was the investigating officer ("IO") in this case. On 8 November 2019, ASP Ang requested that Inspector Daniel Lim Boon Wah ("Insp Daniel Lim") and Station Inspector Muralidaran s/o Balakrishnan take over custody of the accused from officers at Woodlands Police. The accused

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29 Statement of ASP Ng Liang Jie at AB p 127 para 4.

30 Transcript of 5 April 2022 p 63 ln 31 to p 64 ln 2.

31 Statement of ASP Ng Liang Jie at AB pp 127–128 para 6.

32 Statement of ASP Ng Liang Jie at AB p 130 paras 13–14.

had been referred to the CID's Special Investigation Section as he was a person of interest in Izz's unnatural death.[33]

33 On 8 November 2019 at about 7.30 p.m., ASP Ang informed SSI Mazlan that the accused would be placed under arrest for the offence of voluntarily causing grievous hurt and requested that he record a statement from the accused. At about 9.00 p.m., ASP Ang prepared and handed over to Superintendent of Police Koh Yu Shan, Cyndi ("Supt Cyndi Koh") a typewritten charge of voluntarily causing grievous hurt and requested that she record a cautioned statement from the accused in respect of this charge.[34]

34 Between 11 November and 21 November 2019, ASP Ang recorded multiple statements from the accused with the assistance of Malay interpreter Mdm Sapiahtun Mohd Ali ("Mdm Sapiahtun").[35] In addition, on 21 November 2019, he escorted the accused to the basement carpark at PCC where the accused's van was parked: a re-enactment of the incident was conducted, with ASP Ang also asking the accused questions and Mdm Sapiahtun interpreting.[36]

Nadiah

35 In Nadiah's conditioned statement, she provided an account of the events of 7 and 8 November 2019. According to Nadiah, there was a verbal disagreement between her and the accused at Wisteria Mall on 7 November 2019, because *inter alia* the accused questioned why she had not disciplined Izz for spilling her drink at dinner: according to Nadiah, the accused had been "very

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33 Statement of ASP Ang Ghim Seng at AB p 192 para 2.

34 Statement of ASP Ang Ghim Seng at AB p 193 paras 5–6.

35 Statement of ASP Ang Ghim Seng at AB pp 195 – 211 paras 13 – 59.

36 Statement of ASP Ang Ghim Seng at AB p 209 paras 55–56.

pissed off" and "angry" when Izz spilt the drink at dinner; and he had asked her to "scold Izz", but she had disagreed.[37] Subsequently, however, when the accused volunteered to take care of Izz for the night by bringing him back to his home in Yishun, Nadiah agreed because she was going to work the next day and her mother was unable to look after Izz.[38] At that point, she also believed that the accused's parents would be able to help take care of Izz since he was staying with his parents in Yishun.

36 In examination-in-chief, Nadiah was referred to a series of WhatsApp messages[39] which she had exchanged with the accused between 10.36 p.m. and 10.43 p.m. on 7 November 2019 (*ie*, after he had dropped her off at her parents' flat); in particular, to a message which she had sent the accused at 10.36 p.m. in which she had said (*inter alia*), "Sorry about just nw [*sic*]", and another message from her at 10.38 p.m. in which she had said (*inter alia*), "Please don't give up on me or Izz. I want you not to feel pissed off easily. I want you to be more patience [*sic*] n gv me time to learn being an independent mum". Nadiah explained that when she told the accused she was "sorry about just now", she had been referring to the incident in which Izz had spilt the drink at dinner; and she had apologised to the accused as she did not want to argue further with him. She had asked the accused not to "feel pissed off easily" because she wanted "[her] son to be safe as well"; and moreover, she was having "some problems with [her] marriage" at the time and had "no one else to actually talk to".[40]

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37 Transcript of 8 April 2022 p 7 ln 12 to p 8 ln 17.

38 Statement of Nadiah bte Abdul Jalil at AB p 112 paras 4 – 5.

39 Exhibit P-84.

40 Transcript of 8 April 2022 p 26 ln 24 to p 27 ln 27.

37 Sometime past midnight on 8 November 2019, the accused called Nadiah on her mobile phone, sounding "panicky", and told her that he needed to see her urgently. Although she asked him why they needed to meet so urgently, he did not tell her the reason.[41]

38 When Nadiah met the accused at the main road near Strategy Building and got into the front passenger seat of the van, she found that the accused was behaving strangely: he held her hand and kept repeating that he did not want her to leave him. As they drove off, Nadiah repeatedly asked the accused what had happened, but the only response she received from him was that he would explain later. At this time, Nadiah was under the impression that Izz was still with the accused's parents at their Yishun flat.

39 The accused drove aimlessly and did not appear to know where he was going – though he did mention that he wanted to avoid roadblocks. At this point, Nadiah turned her head and saw Izz lying on the floor of the rear cabin. When she asked the accused what had happened, he replied, "Izz *tak ada*". Nadiah understood this to mean that Izz had passed away.[42] The accused said that he had been playing with his mobile phone at the rear cabin when Izz "fell off the rear cabin onto the ground". Nadiah reprimanded him for not pulling Izz to safety when he saw Izz crawling out of the van, but the accused claimed that things had "happened too fast". When Nadiah asked why he had not called for an ambulance, the accused replied that he had wanted to inform her first.[43]

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41 Statement of Nadiah bte Abdul Jalil at AB p 113 para 8.

42 Statement of Nadiah bte Abdul Jalil at AB p 113 para 10.

43 Statement of Nadiah bte Abdul Jalil at AB pp 113 – 114 para 10.

40 The accused then stopped the van, whereupon Nadiah went to the rear cabin and saw Izz lying in a supine position on the floorboard. She put on the baby carrier which was spread beneath Izz's body and strapped Izz into it. When she touched Izz, she could feel that his neck was "not flexible, unlike when [she had] carried him previously when he was sleeping". While Izz's body was warm to the touch, it was "not the usual temperature, and was somewhat cooler than usual".[44]

41 With Izz strapped in the baby carrier and his face against her chest, Nadiah returned to the front passenger seat, and the accused drove off. Nadiah held Izz's hands and caressed his neck – but there was no response. At this point, she knew Izz was dead.[45]

42 Somewhere around Jurong, the accused stopped the van and got out. Nadiah did not know where he went, but she felt that he was "delaying the time to go to the hospital".[46] When he returned to the van, he asked Nadiah if he should call for an ambulance or bring Izz straight to hospital. Nadiah suggested bringing Izz to hospital, but the accused was undecided. Instead, he continued driving;[47] and as he was driving, he pointed at Izz's forehead and asked her how long the "wound would take to heal". It was at this point that Nadiah noticed three bruises on Izz's forehead, at the center and the left and right sides of his forehead.[48]

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44 Statement of Nadiah bte Abdul Jalil at AB p 114 paras 12 – 13.

45 Statement of Nadiah bte Abdul Jalil at AB p 114 para 13.

46 Transcript of 8 April 2022 p 13 ln 7 to ln 17.

47 Statement of Nadiah bte Abdul Jalil at AB p 113 para 13.

48 Statement of Nadiah bte Abdul Jalil at AB p 114 para 14.

43 Nadiah told the accused that the bruises "would not heal fast". The accused then told her the following version of events: according to the accused, he had been carrying the baby items in one hand and Izz in his other arm whilst trying to close the van door. Izz "suddenly fidgeted" and "fell headfirst onto the plywood floorboard of the van, bounced, hit his head a second time on the footrest of the van, before finally falling onto the carpark floor".[49] The accused told Nadiah that "if anyone asked what happened to Izz", the two of them "should tell them the same story so that he would not get into any trouble".

44 By this time, Nadiah was confused and in shock: she just wanted to bring Izz to the hospital. The accused agreed to do so. A short while later, however, he changed his mind. He suggested to her that they should instead pay someone to bury Izz, and that "maybe a year later [they] could report to the Police that Izz was missing". Nadiah refused and insisted that Izz should be accorded a proper Muslim burial. The accused eventually agreed, and told her the story that he was going to tell the hospital:

(a) The accused was carrying Izz's essentials in one hand and Izz in his other hand while trying to close the van door;

(b) Izz suddenly fidgeted and fell on the van floorboard. He hit his head, bounced, hit his head a second time on the footstep and finally fell onto the floor headfirst;

(c) Izz's body was still warm and there was a weak pulse at about 1.00 a.m;

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[49] Statement of Nadiah bte Abdul Jalil at AB p 114 para 15.

(d) The accused tried to revive Izz by giving him Cardiopulmonary Resuscitation ("CPR");

(e) The accused called Nadiah and that was why he did not call the ambulance;

(f) Izz was still warm when the accused met Nadiah; and

(g) Izz started to turn cold and they proceeded to the hospital.

45 Nadiah agreed to this and the accused then drove to NUH.[50] In cross-examination at trial, Nadiah explained that at this juncture, her mind had been in a mess and she did not know at the time that the accused was not telling the truth about Izz's death.[51]

46 Upon arriving at NUH, the accused told Nadiah that he feared being remanded by the police and wanted to brush his teeth and wipe his body. He then left the van while she waited inside the van.[52] She felt again that he was "delaying time before [they] sought help from a doctor".

47 When they finally walked into the A&E department at NUH, the accused told her that he wanted to discard one of his two mobile phones as it contained evidence of him selling vape or vape juice. Nadiah sat at the Kopitiam within NUH while the accused went to look for a suitable spot to discard his phone. When she became impatient and started walking towards the A&E, the accused came up from behind her and suggested making a detour to the bus stop outside

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50 Statement of Nadiah bte Abdul Jalil at AB p 115 para 16.

51 Transcript of 8 April 2022 p 14 ln 21 to ln 32.

52 Statement of Nadiah bte Abdul Jalil at AB p 115 para 17.

so that he could discard his phone.[53] As they approached the bus stop, Nadiah heard the sound of something "heavy" being thrown into the bushes. They proceeded to the A&E after she told him that she was "feeling weak" and "not able to bear it much longer".

48 On arriving at the NUH A&E, Nadiah fainted. She did not know what happened next.[54]

Ahmad Faris bin Abdul Jalil

49 Nadiah's brother Faris stated that Nadiah had arrived at his Jurong East flat at about 10 p.m. on 7 November 2019. After going to bed himself, Faris woke up at 7.00 a.m. on 8 November 2019 to find six missed calls from Nadiah on his phone and also a text message from Nadiah asking him to call her urgently. When he called her, the accused answered the call. The accused informed Faris that they were at NUH and that Izz had passed away after a fall. Faris was told not to tell anyone and to head to NUH immediately.[55]

Mohamed Yusoff bin Osman ("Yusoff")

50 Yusoff is the accused's father. He received a WhatsApp message from the accused at about 10.51 p.m. on 7 November 2021 in which the accused stated that he was bringing a friend's son home. Yusoff texted the accused back to tell him that it was not convenient for him to come back at that time as there were people in the living-room of their flat.[56] In cross-examination at trial,

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53 Statement of Nadiah bte Abdul Jalil at AB p 115 paras 18–19.

54 Transcript of 8 April 2022 p 70 ln 6 to ln 14.

55 Statement of Ahmad Faris bin Abdul Jalil at AB p 110 paras 5–6.

56 Statement of Mohamed Yusoff bin Osman at AB p 108 para 2.

Yusoff explained that by sending this response, he did not mean that the accused could not bring Izz back to the flat: what he had in mind was that the accused should not do so at that particular point in time,[57] as he was afraid that if the accused brought the child back at that time, his wife (*ie* the accused's mother) and his daughter (*ie* the accused's sister) would "not be happy"[58].

Dr Ian Tan Kai Zhi ("Dr Tan")

51 Dr Tan attended to Izz when he was brought to the NUH A&E on 8 November 2019. In his medical report dated 20 November 2019, Dr Tan noted that the accused had described the following sequence of events to him: at "approximately 0000H" on 8 November 2019, Izz "had fallen out of [the accused's] arms and his forehead collided with the edge of the van before landin prone on the car-park floor".[59] The accused claimed that following the fall, Izz did not lose consciousness and was "still active and crying"; that he (the accused) had contacted Izz's mother and met up with her at "approximately 0100H"; that Izz "still had a pulse and was breathing" between 0100H and 0300H, and only "suddenly became unresponsive at 0300H", at which point he and Izz's mother had "performed CPR" on Izz "for a few minutes".

52 In his medical report, Dr Tan opined that the history and account of the mechanism of Izz's injuries as provided by the accused were not consistent with the three forehead bruises he found on Izz.[60] He also opined that the shape of the linear horizontal bruises observed on Izz's lower limb were not typical of accidental injuries sustained by a 9-month-old child. Further, the bruises over

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57 Transcript of 8 April 2022 p 101 ln 13 to ln 19.

58 Transcript of 8 April 2022 p 100 ln 20 to p 101 ln 1.

59 NUH Medical Report dated 20 November 2019 at AB p 100.

60 NUH Medical Report dated 20 November 2019 at AB p 101.

his lower back and anterior abdomen were not typical locations of bruises sustained following an accidental fall. In cross-examination at trial, Dr Tan testified that if Izz had indeed fallen on a flat surface as the accused claimed, then such a fall would not have caused the three discrete well-defined bruises he observed on Izz's forehead: instead, such a fall would usually cause one or two poorly-defined bruises.[61]

53 Moreover, Dr Tan noted that there was an unexplained delay of approximately one hour in seeking urgent medical help for an unresponsive infant with a recent high risk head injury. Given the delay in seeking treatment as well as the inconsistencies between the alleged history provided by the accused and the physical examination findings at NUH,[62] Dr Tan was of the view that there were grounds for suspecting that Izz's injuries were non-accidental.

54 Pursuant to a production order by the police requesting information relating to Izz's previous visits to NUH, Dr Tan also prepared a medical report setting out information on Izz's visits to the NUH children's emergency department on 5 October 2019 and 2 November 2019. On 5 October 2019, Izz was brought by his mother for review of a bruise over his left cheek which she had noticed the day before. The injury was said to have been sustained when the mother (Nadiah) lost her balance following an altercation with her husband and fell with Izz strapped to her chest in a baby-carrier.[63] Izz was not reported to have lost consciousness, nor was there any change in his behaviour or feeding habits after this incident. He was discharged with the diagnosis of "abrasions on

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61 Transcript of 6 April 2022 p 6 ln 26 to p 7 ln 20.

62 NUH Medical Report dated 20 November 2019 at AB pp 101.

63 NUH Medical Report dated 29 September 2020 at AB p 102.

face" with no medication prescribed and no follow-up consultation fixed. On 2 November 2019, he was brought to NUH again by his mother for a rash and a tongue ulcer. On this occasion, he was discharged with medication but no follow-up consultation was scheduled.[64]

Dr Cheow Enquan ("Dr Cheow")

55 Dr Cheow of the Institute of Mental Health ("IMH") conducted the forensic psychiatric evaluation of the accused, for which purpose he interviewed the accused on three occasions before issuing a report dated 10 December 2019.[65] In gist, Dr Cheow's opinion was that the accused was fit to stand trial and not of unsound mind at the time of the alleged offence.[66]

56 The accused's background and personal history were set out in some detail by Dr Cheow in his report. The accused is divorced, with a 2-year-old daughter who is in the custody of his former wife. He also has a 3-year-old son who lives with his former girlfriend. The accused studied Marine Engineering at a local polytechnic, but dropped out due to financial constraints. In October 2010, he was first seen at IMH when he felt stressed after breaking up with his girlfriend. He was assessed to have no mental illness. He did not complete his National Service, having been medically downgraded and discharged on psychiatric grounds. He was referred to IMH in December 2010, and again in January 2011 by the SAF Medical Officer, for having suicidal and homicidal thoughts: he was diagnosed with an adjustment disorder. During his interviews with Dr Cheow, however, he told the latter that he had "actually lied about being suicidal and having homicidal thoughts towards others during his national

64 NUH Medical Report dated 29 September 2020 at AB p 103.

65 Statement of Dr Cheow Enquan at AB p 86.

66 Dr Cheow Enquan's Report dated 10 December 2019 at AB p 91 paras 32–33.

service, as he was simply unwilling to serve in the SAF (Singapore Armed Forces)".[67]

57 The accused's next visit to IMH was in December 2015. He was brought there by the police following a quarrel with his fiancée. On that occasion, his father had tried to intervene, which led to his becoming more agitated and allegedly injuring his father's finger "accidentally". He was diagnosed with an "acute stress reaction" and with "anger management issues".

58 Prior to the 7 November 2019 incident involving Izz, the accused's last visit to IMH was in July 2017. This was for the purpose of a medical report, as he had been referred to IMH by the Child Protection Services ("CPS"). His then fiancée (whom he later married and then divorced) had reported being physically assaulted by him, and had also reported that he had "pinched and verbally threatened" their son. In the IMH report, the accused was noted to have been sarcastic towards the psychiatrist and to be easily provoked. He was assessed as not meeting the diagnostic criteria for a mental disorder. However, the report noted that he had personality traits such as being prone to anger outbursts and making suicidal/homicidal threats, and that these behaviours were pervasive and causing distress to others". Psychotherapy for anger management was recommended, but the accused "did not see any problem with his behaviour and did not see the need for intervention".

59 In his report, Dr Cheow documented the account – or more accurately, *accounts* - of events which the accused had related to him regarding the night when Izz died. According to the initial account given, the accused had left Izz in the back of the van while he visited the nearby supermarket to buy towels and

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67 Dr Cheow Enquan's Report dated 10 December 2019 at AB p 88 paras 4 and 8.

wet wipes. On returning to the van, he was packing the "baby stuff" when Izz started crying. He reported feeling "uncomfortable" due to "the baby constantly interrupting him" – although he denied feeling "disturbed" by the crying as he felt that it "would sound incriminating if he admitted to being 'disturbed by the crying'". At this point, Izz was "in a crawling position". The accused "proceeded to push [Izz's head against the plywood floor of the van", using what he described to Dr Cheow as "mild force". He then placed Izz in a sitting position. When Izz continued crying, he "pushed [Izz's] head against the floor once again from this position". Subsequently he tried to feed Izz, but Izz refused the milk; and he noticed bleeding from Izz's gums. As his father was not keen on letting him bring Izz home, he contacted Nadiah instead in order to return Izz to her. Nadiah noticed bruises on Izz's forehead when she met up with him, but he told her that Izz had fallen down. At this time, Izz "appeared OK". It was only an hour later that he and Nadiah realised Izz was "not responsive" and not well", whereupon they decided to bring him to NUH.[68]

60 Dr Cheow noted that after providing the above version of events, the accused changed his position during his second and third interviews. He claimed that the account he had previously provided "was as per the SOF", but that he had "said the wrong thing" as he was in a "state of panic", allegedly as a result of "coercive interrogation techniques" used by the police. The accused's subsequent, altered account of events ran as follows:

> When [the accused] returned to the van after visiting the nearby supermarket, he saw the baby fall down and hit its head against the plywood floor of the van. He stated that he then placed the baby in a sitting position. The baby kept crying as he packed the "baby stuff" so he claimed that he was actually trying to soothe the baby by patting the baby's neck but may have accidentally ended up pushing the baby forward instead. He further claimed that he did not use much force but the baby

[68] Dr Cheow Enquan's Report dated 10 December 2019 at AB pp 89 – 90, paras 15 – 20.

> might have already been weakened from the previous fall. He told "Nadia" (*sic*) and the NUH doctors that the baby had fallen out of his arms though as he did not think they would believe him if he told them that the baby had fallen down on its own.

61 Dr Cheow's assessment was that the accused had "impulsive personality traits characterised by being prone to anger outbursts with a propensity to react with violent or suicidal threats". In his report, Dr Cheow stated that despite the accused's denial of past physical violence, his then-fiancée had reported physical assaults on herself and her son by the accused.[69] In cross-examination at trial, Dr Cheow testified that he did not know whether there was medical evidence or documentary evidence available to support the then-fiancée's claims:[70] what he had stated in his report was what he had found in the accused's past IMH records.

Dr Wong Choong Yi Peter ("Dr Wong")

62 Dr Wong was asked by the police to provide an expert opinion on Izz's clavicle report. He was provided the clinical notes and autopsy report for Izz. The following two video recordings were also provided to him:

(a) The first video, dated 3 November 2019 (the "3rd Nov Video"), showed Izz supporting the weight of his torso on both arms in crawling position, while climbing onto a mattress with some hesitation. Dr Wong opined that based on Izz's vocalisations and facial expressions, he might have been in some discomfort when doing so.

(b) The second video was dated 5 November 2019 (the "5th Nov Video"). It showed Izz crawling on the floor using both outstretched

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69 Dr Cheow Enquan's Report dated 10 December 2019 at AB p 91 para 31.

70 Transcript of 8 April 2022 at p 87 ln 26 to ln 32.

arms and pulling himself into a standing position by holding on to a piece of furniture (sideboard), while using his right hand to reach for and grasp packets of food on the sideboard. Dr Wong opined that Izz did not appear to be in discomfort when doing so.

63 According to Dr Wong, clavicle fractures are common accidental injuries in young children. Given Nadiah's account of an earlier injury on 2 November 2019 and photographs showing swelling over Izz's left clavicle on 3 November 2019, Dr Wong's view was that the fracture "may have been present" prior to the events in the van on 7 November 2019.[71] In his view, the pathologist was the professional who was best qualified to comment on the age of the fracture. In this connection, Dr Wong noted that the autopsy report had documented an absence of callus formation around the clavicle fracture. This finding was consistent with two possibilities:

(a) The fracture had occurred on 2 November 2019 (5 days before Izz's demise); or

(b) The fracture had occurred closer to Izz's demise on 8 November 2019.

64 At trial, Dr Wong reiterated that it was possible for the clavicle fracture to have occurred on 2 November 2019 (*ie*, 5 or 6 days before Izz's death).[72]

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71 Dr Wong Choong Yi Peter's Expert Opinion at AB p 106.

72 Transcript of 12 April 2022 p 65 ln 10 to ln 12.

Dr Gilbert Lau ("Dr Lau")

65 Dr Lau conducted an autopsy on Izz's corpse on 9 November 2019 and issued an autopsy report dated 18 November 2019.[73]

66 With regard to the external injuries observed on Izz, the report recorded (*inter alia*) abrasions and bruising on the scalp, as well as bruising and abrasions on the nose, bruises on the left arm, and bruises on the left thigh and left knee.[74] As for the internal injuries observed by Dr Lau, these included acute subdural hemorrhage and acute subarachnoid hemorrhage, scalp bruises, and a laceration along the frenulum of the upper lip.[75] There was also a fracture of the lateral third of the left clavicle. In Dr Lau's opinion, the cause of death was traumatic intracranial haemorrhage, which "would be consistent with the infliction of blunt force trauma to the head and face". Further, a number of the external and internal injuries – namely, the facial abrasions and bruises, the laceration of the frenulum with surrounding mucosal bruising, and the fractured left clavicle – were, in Dr Lau's opinion, "highly suspicious of non-accident injury".[76]

67 At trial, Dr Lau's evidence was that for fatal traumatic intracranial haemorrhage to have occurred, blunt force trauma would have been applied to the head which would have resulted in internal bruising of the scalp and the left temporalis muscle, and that these forces would have been transmitted through the skull, thereby injuring the brain.[77] The hemorrhage would have caused pressure to build up in the intracranial cavity due to haemorrhage and brain

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73 Statement of Dr Gilbert Lau at AB p 78 paras 2–3.

74 Autopsy Report dated 18 November 2019 at AB pp 80 – 81.

75 Autopsy Report dated 18 November 2019 at AB pp 81 – 82.

76 Autopsy Report dated 18 November 2019 at AB p 85.

77 Transcript of 12 April 2022 p 21 ln 29 to ln 32.

swelling, and vital centres of control (breathing, respiration, heart function etc) in the brain stem would ultimately be compromised.[78] It was uncertain how long it would have taken from the time of injury before the child (Izz) lapsed into unconsciousness.[79] This brain injury would have been sufficient in the ordinary course of nature to cause death.[80]

68 In response to Defence counsel's cross-examination, Dr Lee pointed out that he had found Izz's entire brain to be swollen; and although he had not found evidence of bleeding in the brain substance itself, "the swelling of the brain and the haemorrhages around it would have been very, very significant findings forensically".

69 In addition, Dr Lau cautioned that in this instance, it was "important not to be fixated on the presence or absence" of skull fractures because although the skull bones of an infant "are very pliable" and can be subjected to quite a bit of force and yet not break", the forces applied to the head would have been transmitted through the skull bones into the brain, causing rupture of the blood vessels on the surface of the brain. Dr Lau noted that even for adults, he had seen – when he was in practice – "a huge subdural haematoma in an adult without a fracture of the skull".[81]

70 Asked to comment on the laceration to the frenulum of Izz's upper lip, Dr Lau testified that the "classical interpretation" of such an injury "would be that it was likely to have been caused by the application of blunt force trauma to the mouth or to the lips' and that this would "signal a likelihood, a high

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78 Transcript of 12 April 2022 p 30 ln 27 to p 31 ln 2.

79 Transcript of 12 April 2022 p 31 ln 10 to ln 19.

80 Transcript of 12 April 2022 p 31 ln 26 to ln 28.

81 Transcript of 12 April 2022 p 21 ln 5 to ln 24.

likelihood in fact of non-accidental injury".[82] In cross-examination, Dr Lau was asked about Nadiah's evidence that a few days before 7 November 2019, Izz had fallen face downwards" and injured his "upper lip" while crawling. His evidence was that he found this "completely inconsistent" with the nature of the injury to the frenulum which he had observed, as the injury to the frenulum "would require quite a bit of force"– whereas if Izz had fallen "face downwards" while crawling, the distance that his head would have travelled to the floor "wouldn't have been very high", and the first point of contact "would likely have been the chin rather than the upper lip". In response to Defence counsel's assertion that both the accused and Nadiah had observed "a swell on [Izz's] upper lip on the 7th of November", Dr Lau stated that while that might have been the case, such a "swell" was "quite different from a laceration of the frenulum", which was of a "completely different order or magnitude altogether".[83]

71 Asked about the fracture of the left clavicle, Dr Lau's evidence was that the injury looked fresh and that he had not found any evidence of healing at the time of the autopsy. However, he stressed that the healing of bone injuries was very variable; that one had to be "very careful about ageing these injuries"; and that while the fracture seemed to be a fresh injury at the time of the autopsy, he was unable to say categorically that it "could not have been sustained or inflicted a day or two or some day before the fatal injuries were inflicted or sustained".[84] Nevertheless, even allowing for evidence that the clavicle fracture had occurred "sometime on the 2nd of November 2019", Dr Lau's opinion was that that the remaining injuries on Izz were highly suspicious of non-accidental injury.[85]

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82 Transcript of 12 April 2022 p 25 ln 2 to ln 17.

83 Transcript of 12 April 2022 p 56 ln 28 to p 57 ln 31.

84 Transcript of 12 April 2022 p 28 ln 3 to ln 17.

85 Transcript of 12 April 2022 p 59 ln 12 to ln 28.

72 According to Dr Lau, the injuries on Izz were relatively fresh, and probably inflicted within 24 hours of death as no evidence of healing was shown.[86] Dr Lau stated that insofar as he had documented finding "faint bruises" on Izz, these faint bruises could not be old injuries, as none of the bruises showed the sort of yellowish discoloration that would have suggested they were probably more than 18 hours old. Indeed, the fact that the bruises were faint could suggest that they had not developed fully before the child died.[87]

73 As to the likely degree of force used in this case, Dr Lau stated that this was a difficult issue to opine on in instances involving fatal non-accidental injuries in young children which had allegedly been caused by a full-grown adult. His evidence was that if the assailant were indeed a full-grown adult, then one had to recognize the existence of "a stark asymmetry…between a defenceless 9.5-month-old infant and a full grown adult": "what might have been mild or moderate force on the part of the assailant could amount to moderate to severe force as experienced by the child".[88]

74 Dr Lau was asked to consider the differing versions of events provided by the accused in respect of what had happened to Izz on the night of 7 November 2019. In gist, these differing versions – which were gleaned from statements made by the accused at various points following the incident itself – posited in turn:

(a) An accidental fall in which Izz had fallen from the van onto the ground;

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86 Transcript of 12 April 2022 p 13 ln 18 to ln 22.

87 Transcript of 12 April 2022 p 54 ln 17 to ln 29.

88 Transcript of 12 April 2022 p 32 ln 22 to p 33 ln 3.

(b) An accidental fall in which Izz had fallen headfirst onto the floorboard of the van, "bounced" off the floorboard, hit the footstep, and then fallen to the ground;

(c) An accidental fall by Izz onto the van floorboard, followed by the accused accidentally pushing him forward while attempting to soothe him;

(d) The intentional pushing of Izz's head against the van floorboard, first with his left cheek coming into contact with the floorboard, and a second time with his face down towards the floorboard.[89]

In general, with regard to the versions which recounted an accidental fall of some sort, Dr Lau noted that there was a total lack of the sort of linear abrasions and lacerations that would have been expected from a fall in which the child had allegedly come into contact with the edge of the floorboard or the footstep. Instead, the abrasions found on Izz were all non-linear, and no laceration was found.[90] Dr Lau also expressed doubt about the accused's claim that Izz had "bounced" off the wooden floorboard of the van, given that the head is a solid non-spherical structure and the floor of the van is a firm unyielding surface.[91] In Dr Lau's opinion, the version of events in which Izz had fallen headfirst onto the van floorboard before "bouncing" off it would be the least compelling version. In contrast, in Dr Lau's opinion, the version of events in which Izz's head had been pushed twice against the floorboard was the most compelling version and would explain the occurrence of many of the external and internal

89 Transcript of 12 April 2022 p 35 ln 9 to ln 11.

90 Transcript of 12 April 2022 p 42 ln 8 to ln 14; p 44 ln 15 to ln 21; p 46 ln 2 to ln 9.

91 Transcript of 12 April 2022 p 45 ln 13 to ln 30.

injuries to the scalp. Dr Lau testified that taken together, both acts of pushing would have caused the two haemorrhages. In his view, there would have been at least two distinct or discrete blows to the head: one to the front of the head and one to the left side of the head.[92]

Forensic Evidence and Exhibits

75 Apart from the evidence adduced from witnesses by way of conditioned statements and testimony, forensic evidence was also collected and analysed. *Inter alia*, under the direction of ASP Ang Ghim Sing, swabs of red stains were collected from the wooden floor of the van.[93] They were submitted to the DNA Profiling Lab at the Health Sciences Authority for analysis.[94] Izz was identified as a matchable contributor for the blood swabs.[95]

76 Data was extracted from the accused's two phones (one of which was recovered from some bushes at the bus stop near NUH)[96] and from Nadiah's phone.[97] CCTV footage of the Yishun MSCP and the Sheng Siong supermarket which the accused had visited was obtained, as well as CCTV footage of NUH and its vicinity which captured the accused's and Nadiah's movements from the NUH carpark to the A&E Department.[98]

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92 Transcript of 12 April 2022 p 50 ln 11 to ln 18; p 50 ln 29 to p 51 ln 317.

93 Statement of Insp Toh Ah Hong at AB p 30 para 2.

94 Lim Xin Li's affidavit at AB p 62 paras 3–4.

95 See Lab Report No. DN-1943-02332 dated 27 March 2020 at AB pp 63 – 77.

96 Soh Chor Xiang's Statement at AB pp 44–48; Ahmad Zakir bin Jamaludin's Statement at AB pp 49–53.

97 Abdul Muttalib's Statement at AB pp 36–40.

98 See Aide Memoire, Exhibit P-91.

Statements by the accused

77 The Prosecution also sought to admit 11 statements given by the accused in the course of investigations. The following four statements were admitted into evidence by agreement:

(a) Statement recorded 8 November 2019 at about 6.15 am by SSSgt Abu Hamid;[99]

(b) Statement recorded on 11 November 2019 at 4.30 pm by ASP Ang;[100]

(c) Statement recorded 12 November 2019 at 5.20 pm by ASP Ang;[101] and

(d) Statement recorded 19 November 2019 at 11.15am by ASP Ang.[102]

78 The Defence challenged the admissibility of the following seven statements ("the challenged statements"):

(a) Statement recorded on 8 November 2019 at 7.40 pm by SSI Mazlan, in which the accused had admitted to pushing Izz's head towards the floorboard of the van;[103]

99 Exhibits P-23 and P-89.

100 Exhibit P-92.

101 Exhibit P-26.

102 Exhibit P-32.

103 Exhibit P-96.

(b) Charge, Notice of Warning and statement dated 8 November 2019 at 9.07 pm by Supt Koh Yu Shan, Cyndi ("Supt Cyndi Koh"),[104] in which the accused had stated he was remorseful upon being served a charge of voluntarily causing grievous hurt to Izz by slamming Izz's head against the floorboard of the van;

(c) Statement recorded on 12 November 2019 at 10.45 am by ASP Ang, in which the accused admitted to pushing Izz's head towards the floorboard of the van;[105]

(d) Statement recorded on 13 November 2019 at 9.45 am by ASP Ang Ghim Sing, in which the accused stated that he was "*rimas*" (or uneasy) when he pushed Izz's head towards the floorboard;[106]

(e) Charge, Notice of Warning and statement dated 14 November 2019 at 2.25 pm by ASP Ng Choon Siong Desmond ("ASP Desmond Ng"), in which – in response to a charge of murder by causing the death of Izz - the accused stated that he "did it in the moment of frustration after hearing [Izz] crying".[107]

(f) Statement recorded on 20 November 2019 at 2.05 pm by ASP Ang, in which the accused stated that he and Nadiah had agreed, after discussion, to tell the hospital staff the story of an accidental fall if the staff asked about Izz's injuries;[108] and

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104 Exhibit P-97.

105 Exhibit P-98.

106 Exhibit P-99.

107 Exhibit P-100.

108 Exhibit P-101.

(g) Statement recorded on 21 November 2019 at 4.35 pm with 15 photographs marked as Annex 'A' by ASP Ang, depicting the accused's re-enactment of how he had pushed Izz's head against the floorboard.[109]

79 An ancillary hearing was conducted in respect of these seven disputed statements, at the end of which I found all seven statements to have been made voluntarily and admitted them into evidence. I set out below the reasons for this finding.

The ancillary hearing:

The alleged threats

80 It should be noted that although the High Court has ruled that there is no legal impediment to the court having sight of the disputed statement during the ancillary hearing in order to ascertain if any part of it is relevant to the determination of issues relating to voluntariness (see *PP v Mohamed Ansari bin Mohamed Abdul Aziz and another* [2019] SGHC 268 ("*Mohamed Ansari*") at [15]), neither the prosecution nor the defence in this case requested that I peruse the contents of the disputed statements during the ancillary hearing. For the purposes of the ancillary hearing, however, it was generally agreed that the disputed statements were those where the accused had given an account (or accounts) of events involving his having pushed Izz's head against the floorboard of the van, whereas the statements for which voluntariness was not disputed were those where he had given an account (or accounts) of an accidental fall.

109 Exhibit P-102.

81 In challenging the voluntariness of these seven statements, the accused sought to rely on two alleged threats, which were first raised in the Case for the Defence dated 31 January 2022 and the Further Case for the Defence dated 6 March 2022. First, the accused claimed that on 8 November 2019, while interviewing him in an interview room at Woodlands Police Division, SSI Mazlan had banged on the table and told him: "If you *never* change your statement, you go to the gallows"[110] ("the alleged 8 November 2019 threat"). I should add that in cross-examination during the ancillary hearing, this threat was phrased slightly differently, as "If you *don't* change your statement, you go to the gallows".[111]

82 Second, the accused claimed that on 11 November 2019 at Police Cantonment Complex, after he had voluntarily given a statement at 4.30 p.m., he was brought to a room where there were four to five police officers. According to the accused, one of the police officers threw a Dasani mineral water bottle (which was filled with water) at him, striking his left cheek, before telling him: "You better be remorseful or I buy you a rope" ("the alleged 11 November 2019 threat").[112]

Witnesses called by the Prosecution in respect of the alleged 8 November 2019 threat

83 SSI Mazlan was identified by the accused as the officer who made the alleged 8 November 2019 threat to him. SSI Mazlan testified that he had interviewed the accused between 12.55 p.m. and 1.55 p.m. on 8 November 2019, in the presence of ASP Ng in Interview Room 2 at Woodlands Police

110 Additional Case for the Defence dated 6 March 2022.

111 See *eg*, Transcript of 6 April 2022 p 46 ln 6 to ln 11.

112 Case for the Defence dated 31 January 2022.

Station.[113] In cross-examination, it was put to SSI Mazlan that in the course of this interview, the accused had told him "multiple times" about Izz dropping from the accused's arm "onto the plywood floor of the van, onto the footrest, and onto the ground"; and that "maybe about 1.50 p.m., just before the completion of the interview", SSI Mazlan had "banged the table before the accused multiple times" before standing up, leaning across the table, going "close to the accused's right ear", and saying the words: "If you don't change your statement, you go to the gallows".[114] SSI Mazlan denied having done any of these things.

84 It was also put to SSI Mazlan that when interviewing the accused a second time on 8 November 2019, between 7.05 p.m. to 7.40 p.m. in Interview Room B at PCC (*ie*, immediately before recording the first of the seven disputed statements), he had asked the accused: "Do you remember what I told you earlier in the afternoon at Woodlands Police Division?" SSI Mazlan denied this.[115] His evidence was that when he entered the interview room, he had started by explaining that he would be interviewing the accused "regarding the case" and ascertaining whether the accused wished to speak in English or Malay.[116] The accused had seemed quiet, and he had "let [the accused] be" for a while, before prompting him by asking if he had anything else to tell the police. During this time, the accused "was looking down and quiet", so SSI Mazlan decided to wait and to let him think instead. Eventually, the accused stated that he wanted

113 Transcript of 6 April 2022 p 35 ln 6 to ln 29.

114 Transcript of 6 April 2022 p 44 ln 31 to p 46 ln 17.

115 Transcript of 6 April 2022 p 49 ln 27 to p 50 ln 6.

116 Transcript of 6 April 2022 p 36 ln 28 to p 38 ln 14.

"to tell the truth", and it was then that SSI Mazlan decided to commence recording his statement.[117]

85 ASP Ng, who was present in the Woodlands Police interview room the 8 November 2019 threat was allegedly made, testified that during the interview, SSI Mazlan had spoken to the accused in a "professional and courteous" tone, and he had not banged on the table.[118] Evidence was also given by Sergeant Shahrel bin Ali ("Sgt Shahrel"), who arrived at the Woodlands Police interview room while the interview was in progress, for the purpose of escorting the accused to PCC. Sgt Shahrel denied having witnessed SSI Mazlan banging on the table, standing up to lean close to the accused's right ear, and uttering the words "If you don't change your statement, you go to the gallows".[119]

86 Supt Cyndi Koh, who recorded one of the two disputed cautioned statements from the accused on the night of 8 November 2019, testified that throughout her interaction with the accused, she did not hear from him any complaints about any threats, inducements or promises made by SSI Mazlan. She also had no contact with SSI Mazlan before she recorded the cautioned statement of 8 November 2019.[120] Mohammad Rashikin bin Rajah, who acted as the interpreter during Supt Cyndi Koh's recording of the 8 November 2019 cautioned statement, testified that he too did not receive any complaints from the accused about SSI Mazlan.[121]

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117 Transcript of 6 April 2022 p 36 ln 28 to p 38 ln 14; p 49 ln 11 to ln 20.

118 Transcript of 6 April 2022 p 57 ln 1 to ln 12, ln 23 to ln 31; p 63 ln 21 to ln 28.

119 Transcript of 6 April 2022 p 141 ln 1 to ln 12; p 143 ln 4 to ln 10.

120 Transcript of 6 April 2022 at p 66 ln 1 to ln 15; p 67 ln 19 to ln 21.

121 Transcript of 6 April 2022 p 70 ln 28 to p 71 ln 1.

Witnesses called by the Prosecution in respect of the alleged 11 November 2019 threat

87 Insp Daniel Lim was identified by the accused as the officer who made the alleged 11 November 2019 threat to him. Insp Daniel Lim testified that on 11 November 2019, his team had been preparing for another High Court case, and he had returned to PCC at about 6.15 p.m. after serving the papers for the preliminary inquiry ("PI") in another case. On his return to PCC, he tidied up some things. As he received no other instructions from his superior ASP Ang Ghim Seng, he left PCC for home at about 6.45 p.m. to 7 p.m.[122]

88 In cross-examination, it was put to Insp Daniel Lim that he had interviewed the accused earlier on 8 November 2019, at about 3.56 p.m., that he had been "unfriendly" towards the accused, and that he had told the accused he did not believe his version of an accidental fall.[123] Insp Daniel Lim agreed that he had interviewed the accused on the afternoon of 8 November 2019, but clarified that at that stage, the police still did not know much about the case,[124] and he had just been "trying to gather" evidence from the accused about the sequence of events.[125] He denied having been "unfriendly" towards the accused or having stated that he did not believe the accused's version of an accidental fall. Instead, according to Insp Daniel Lim, he had spent the initial part of the interview trying to build rapport by asking the accused "about his job, et cetera". At this point, the conversation was in English, as Insp Lim had been told that the accused could speak English. However, as he started going into the "interview proper", he noticed that the accused was becoming "rather evasive",

122 Transcript of 6 April 2022 p 105 ln 11 to p 107 ln 10.

123 Transcript of 6 April 2022 p 115 ln 2 to ln 5.

124 Transcript of 6 April 2022 p 112 ln 10 to ln 15.

125 Transcript of 6 April 2022 p 115 ln 6 to ln 10.

especially when asked about things such as timing and sequence which did not seem right – and it was at this point that the accused started asking Insp Lim questions in Malay. As he found it difficult to carry on the conversation, Insp Lim informed the IO ASP Ang that he "might not be the right person to interview [the accused]"; and he was told that another officer would take over the interview. After this, Insp Lim had "more casual" conversation with the accused, which had nothing to do with the case.[126]

89 It was suggested to Insp Daniel Lim that ASP Ang had called him around 7.15 p.m. on 11 November 2019 to tell him that the accused was "not admitting to his office". Insp Lim denied this. It was further put to him that he had then brought the accused from the interview room at the regional lock-up of PCC to another interview room "on the 14th or 16th floor of [PCC]" between 7.15pm to 7.28pm on 11 November 2019; and that at this other interview room, he had thrown a "Dasani water bottle" filled with "half a litre of water" at the accused's cheek before shouting the words: "You better be remorseful or I will buy you a rope".[127] Insp Lim denied having done any of these things. He testified, moreover, that all floors of the PCC building had to be accessed by officers using their police passes; and he himself did not have access to the 14th and the 16th floors.[128]

90 ASP Ang Ghim Sing testified that on 11 November 2019, he had started recording a statement from the accused in Interview Room 5 at PCC, with the assistance of Malay interpreter Mdm Sapiahtun Mohd Ali ("Mdm Sapiahtun"). After recording the statement, he printed it out and read it back to the accused

126 Transcript of 6 April 2022 p 112 ln 10 to p 114 ln 20.

127 Transcript of 6 April 2022 p 115 ln 21 to p 115 ln 24.

128 Transcript of 6 April 2022 p 115 ln 30 to p 116 ln 20.

in English, with Mdm Sapiahtun interpreting. The accused was invited to make any amendments he wished, and he made several amendments. This statement was one of the four admitted by agreement in this trial (*ie*, exhibit P92). In cross-examination, ASP Ang agreed that in this statement (P92), the accused had given a version of events involving an accidental fall – which was "entirely different" from the version related in the statement recorded by SSI Mazlan at 7.40 p.m. on 8 November 2019 (*ie*, the first of the disputed statements).[129] It was suggested to ASP Ang that immediately after completing the recording of P92, he had walked out of the interview room for a short while and had called one of his colleagues "to say that… the accused was not admitting the offence". It was also put to ASP Ang that subsequent to this, "four police officers came and brought the accused to another interview room". ASP Ang denied that any of this had happened.[130] Asked about the 13-minute window between the time he recorded the statement-recording and the time the accused was escorted back to his cell by lock-up officers, ASP Ang stated that nothing had happened during those 13 minutes: his evidence was that the 13-minute wait was "very normal" and was in fact "the average waiting time for the escort officer to respond" to a request.[131] ASP Ang asserted that he would not have left the interpreter alone in the interview room with the accused before the escort officers arrived, as he had to guard the accused until someone else could come to take over.[132]

91 Mdm Sapiahtun testified that she had acted as Malay interpreter for the recording of the statement P92 by ASP Ang on 11 November 2019. She denied that ASP Ang had walked out of the interview room after completing the

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129 Transcript of 6 April 2022 p 86 ln 2 to p 87 ln 14.

130 Transcript of 6 April 2022 p 89 ln 1 to p 90 ln 29.

131 Transcript of 6 April 2022 p 91 ln 17 to ln 27.

132 Transcript of 6 April 2022 p 89 ln 21 to ln 31.

statement-recording. She also denied that four police officers had come to the interview room thereafter and taken the accused away.[133]

92 Insp Mohd Shahril bin Ramli ("Insp Shahril") was called to introduce into evidence a copy of the Electronic Station Diary (*ie*, exhibit P93). Insp Shahril explained that the interview rooms within the regional lock-up of the PCC were located inside Zone 3, whereas the cells where accused persons were kept were located inside Zone 4. The ESD would show when the accused was brought from his cell to an interview room within the regional lock-up; and it would also show when he was returned from the interview room to his cell. Insp Shahril also testified that the regional lock-up was in the basement of the PCC building. The 14th and 16th floors were thus outside the regional lock-up area.[134] If the accused was brought out of the regional lock-up to another floor of the PCC building, such movement would be reflected in the ESD – as would any movement of the accused from an area outside the regional lock-up back into the regional lock-up.[135]

93 According to Insp Shahril, any complaint made by anyone remanded in the regional lock-up would be reflected in the ESD as well. In the present case, the ESD did not show any complaints made by the accused for the entire duration of his remand in the regional lockup from 8 November to 22 November 2019.[136] ASP Ang, who recorded further statements from the accused on 12 November 2019 and several subsequent occasions, also testified that he did not receive any complaints from the accused at any of these statement-recording

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133 Transcript of 6 April 2022 p 103 ln 2 to ln 11.

134 Transcript of 6 April 2022 p 130 ln 6 to ln 9.

135 Transcript of 6 April 2022 p 123 ln 19 to o 127 ln 15.

136 Transcript of 6 April 2022 p 122 ln 28 to p 123 ln 6.

sessions about having been subjected to threats. Mdm Sapiahtun, who acted as the Malay interpreter for the recording of these other statements, testified that she too was not told by the accused of any threats.[137]

The accused's evidence

94 The accused claimed that when he was interviewed by SSI Mazlan in the interview room at Woodlands Police Station between 12.55 p.m. and 1.55 p.m on 8 November 2019, ASP Ng and another police officer were present in the room, observing the interview.[138] The accused denied that the other officer present in the interview room was Sgt Shahrel, claiming instead that it was another police officer who "looked like Chinese" and whom he was unable to identify.[139] According to the accused, he had told SSI Mazlan about Izz accidentally falling from his arm, hitting his head on the van floorboard, then hitting his head on the footstep, and finally falling onto the floor. Upon hearing this account of events, SSI Mazlan looked "unhappy" and "banged" the table "multiple times" before standing up, leaning close to the accused's right ear and saying (in English): "If you don't change your statement, you will go to the gallows".[140]

95 The accused claimed that "SSI Mazlan's threat [kept] playing on [his] mind" as he was escorted from Woodlands Police Station to PCC. He "got frightened and very worried" that if he "did not change [his] statement, [he] would go to the gallow". As such, he "decided to create an imaginary story"

137 Transcript of 6 April 2022 p 97 ln 4 to ln 26.

138 Transcript of 7 April 2022 p 5 ln 13 to ln 31.

139 Transcript of 7 April 2022 p 41 ln 25 to p 42 ln 14.

140 Transcript of 7 April 2022 p 6 ln 19 to p 7 ln 30.

about having "pushed" Izz's head "towards the floorboard".[141] However, he did not initially relate this "imaginary story" to Insp Daniel Lim when he was interviewed by the latter at 3.56 p.m. on 8 November 2019, in the PCC interview room. Instead, he told Insp Daniel Lim the version of events involving an accidental fall. He noticed that Insp Lim looked "unhappy" on hearing this version.[142] He was then handed over to SSI Mazlan, and he persisted in repeating this version of the accidental fall to SSI Mazlan when the latter interviewed him again in the PCC interview room at about 7.05 pm. SSI Mazlan "did not believe [this] version", and asked him if he remembered what he had been told by SSI Mazlan earlier in the afternoon at Woodlands Police. It was only because of this reminder of the "threat" that he started telling the "imaginary story" about pushing Izz's head towards the floorboard of the van.[143]

96 According to the accused, in the three-day period between 8 November 2019 and 11 November 2019, SSI Mazlan's "threat" continued "playing on [his] mind". However, when he was interviewed by ASP Ang at 4.30 pm on 11 November 2019, he "decided to come back to [his] original version" of the accidental fall because ASP Ang was "not threatening" him. The accused claimed that when ASP Ang concluded the statement-recording, he walked out of the room, leaving the accused alone with the interpreter Mdm Sapiahtun. When ASP Ang returned to the interview room, he brought the accused out of the room and handed him over to "four to five police officers". The accused was then taken to another interview room on the 14th or 16th floor, where he was questioned by Insp Daniel Lim "many times". When he told Insp Daniel Lim that the accused had "accidentally" fallen from his arm, the latter appeared

141 Transcript of 7 April 2022 p 9 ln 29 to p 10 ln 10.

142 Transcript of 7 April 2022 p 20 ln 2 to ln 10.

143 Transcript of 7 April 2022 p 10 ln 28 to p 11 ln 16.

"unhappy". At this point, the accused and Insp Daniel Lim were seated "facing each other"; and Insp Lim was holding a "Dasani water bottle filled with water", while "four to five police officers" stood behind Insp Lim "observing" the interview. The accused claimed that Insp Lim threw the bottle of water at his cheek, then came and sat next to him, pointed a finger "on [his] neck", and said: "You better be remorseful, or I buy you a rope".

97 Following the above incident, the accused was brought back to his cell in the lock-up area. By this point, both SSI Mazlan's threat and Insp Daniel Lim's threat were "playing on [his] mind". The following day (12 November 2019), when he was interviewed again by ASP Ang at 10.45 a.m., he "decided to give [the] imaginary story" about pushing Izz's head towards the van floorboard.[144]

98 In summarising the accused's position at the conclusion of the ancillary hearing, his counsel stated that the accused relied specifically on the alleged 8 November 2019 threat to challenge the voluntariness of the statement made on 8 November 2019 to SSSI Mazlan,[145] and the cautioned statement made on 8 November 2019 to Supt Cyndi Koh.[146] Counsel also stated that the accused relied specifically on the alleged 11 November 2019 threat to challenge the voluntariness of the statements made on 12 November 2019[147] and 13 November 2019[148] to ASP Ang, as well as the cautioned statement made on 14 November 2019 to ASP Desmond Ng.[149] As for his challenge to the voluntariness of the

144 Transcript of 7 April 2022 p 20 ln 24 to p 21 ln 28.

145 Transcript of 7 April 2022 p 93 ln 7 to ln 24.

146 Transcript of 7 April 2022 p 93 ln 25 to p 94 ln 14.

147 Transcript of 7 April 2022 p 94 ln 15 to ln 24.

148 Transcript of 7 April 2022 p 94 ln 25 to p 95 ln 2.

149 Transcript of 7 April 2022 p 95 ln 3 to ln 10.

two statements recorded by ASP Ang on 20 November 2019 and 21 November, the accused relied on both the alleged 8 November 2019 and the 11 November 2019 threats.[150]

99 The accused admitted that he did not at any time tell his previous counsel, Mr Muzammil, about the alleged 8 November 2019 threat and the alleged 11 November 2019 threat; and that he only brought them up to his new counsel, Mr Nadarajan, sometime in December 2021. When asked by his counsel to explain why he had taken such a long time to bring up the alleged threats, the accused said that it was because these threats "were still playing on [his] mind"; and he also did not know at the time that the words uttered by SSI Mazlan and Insp Daniel Lim constituted threats. He only knew that they were threats when his new counsel told him so.[151]

100 The accused said that he had understood both SSI Mazlan's and Insp Lim's threats to mean that if he stuck to his "true version" of the accidental fall and failed to change his statement, he would "face the death sentence".[152] According to the accused, it was to avoid the death sentence that he came up with the "imaginary story" about having pushed Izz's head towards the floorboard of the van. He believed that this "imaginary story" was less serious than his "true version" of the accidental fall because in the true version of events, Izz had fallen three times.[153]

101 Aside from the accused, no other defence witnesses were called in the ancillary hearing.

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150 Transcript of 7 April 2022 p 95 ln 11 to ln 30.

151 Transcript of 7 April 2022 p 26 ln 15 to p 27 ln 14.

152 Transcript of 7 April 2022 p 27 ln 24 to p 36 ln 15.

153 Transcript of 7 April 2022 p 29 ln 22 to p 33 ln 2; p 58 ln 12 to ln 31.

The law on voluntariness

102 I next set out the legal principles applicable to the consideration of the voluntariness of an accused's statement pursuant to s 258(3) CPC. The determination of voluntariness is a two-stage factual inquiry, comprising an objective and a subjective limb: *per* the Court of Appeal ("CA") in *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Chai Chien Wei Kelvin*") at [53]; *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 ("*Sulaiman*") at [39]. The first stage entails an objective consideration of whether there was a threat, inducement or promise having reference to the charge against the accused person. The second stage of the test of voluntariness is a subjective consideration of whether the inducement, threat or promise operates on the mind of the accused person through hope of escape or fear of punishment connected with the charge: in other words, whether the said inducement, threat or promise was such that it would be reasonable for the accused to think that he would gain some advantage or avoid any adverse consequences in relation to the proceedings against him (*Chai Chien Wei Kelvin* at [53]; *Sulaiman* at [39]).

103 Where voluntariness is challenged, the burden of proof lies on the prosecution to prove beyond a reasonable doubt that the confession was made voluntarily: *Sulaiman* at [36]. That being said, it need not be shown that all doubt of influence or fear had been removed from the accused's mind before an attempt was made to record his confessions. Rather, the trial judge need only consider whether the evidence of the accused alleging inducements, threats, promises or assaults, taken together with the prosecution's evidence, has raised a reasonable doubt in his mind that the accused was thus influenced into making the statement (*Chai Chien Wei Kelvin* at [53], *Panya Marmontree and others v Public Prosecutor* [1995] 2 SLR(R) 806 at [29]; *Mohamed Ansari* at [9]).

The submissions made by the Prosecution and the Defence

104 The Prosecution submitted that the objective limb of the two-stage test was not met for the alleged 8 November 2019 threat and the alleged 11 November 2019 threats as these threats "never took place".[154] The Prosecution also submitted that even if there had been a threat made by SSI Mazlan on 8 November 2019, the subjective limb of the two-stage test would still not be met because the evidence showed that at 4.30 p.m. on 11 November 2019, the accused was still capable of giving a statement containing his initial story of an accidental fall.[155] Moreover, the accused's response to the alleged 8 November 2019 threat and the alleged 11 November 2019 threat did not make sense. The accused's evidence was that he understood both SSI Mazlan and Insp Daniel Lim to have told him that he needed to change his statement from the original (and supposedly true) version of an accidental fall to a version that would allow him to avoid the death penalty. If that were indeed the case, then it made no sense for him to have changed his version of events to a "more serious" version which amounted to a "confession of intentionally pushing" Izz's head against the van floorboard.[156]

105 The Defence submitted that the evidence showed SSI Mazlan must have made a threat against the accused between 1.05 p.m. to 1.55 p.m. on 8 November 2019, in the interview room at Woodlands Police, because no statement was recorded during that period of time. According to the Defence, the purpose of this interview must have been to frighten and threaten the accused into giving a different statement from his earlier statement.[157] As for the 11 November 2019

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154 Transcript of 7 April 2022 p 99 ln 1 to ln 5; p 100 ln 15 to ln 22

155 Transcript of 7 April 2022 p 100 at ln 23 to ln 31.

156 Transcript of 7 April 2022 p 101 at ln 1 to p 102 ln 31.

157 Transcript of 7 April 2022 p 104 ln 28 to p 105 ln 18,

threat, the Defence argued that this must surely have occurred because prior to the accused being threatened by Insp Daniel Lim in the interview room on the 14th or 16th floor of the PCC building, he had been able to tell ASP Ang "the truth" in the statement recorded at 4.30 p.m.; and that must have been because "there was no threat from ASP Ang".[158]

106 As to why the accused changed his story from one of an accidental fall to one which "others may consider…more serious", the Defence argued that the accused, as a layperson, had "his own thinking and his own interpretation": Defence counsel argued that "we have to accept [the accused's] interpretation" that a story about his pushing Izz's head onto the floorboard was somehow less serious than one in which Izz had "dropp[ed] three times".[159]

107 The Defence declined to comment on Insp Shahril's testimony and the evidence of the ESD.[160]

My findings on the voluntariness of the disputed statements

108 Having considered all the evidence adduced in the ancillary hearing and having heard submissions from both sides, I was satisfied that the Prosecution had proven beyond reasonable doubt the voluntariness of the seven disputed statements.

109 In respect of the first limb of the two-stage test articulated by the CA in *Chai Chien Wei Kelvin* and *Sulaiman*, I was satisfied that the alleged 8 November 2019 threat and the alleged 11 November 2019 threat never occurred.

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158 Transcript of 7 April 2022 p 105 ln 19 to p 106 ln 2,

159 Transcript of 7 April 2022 p 108 ln 5 to ln 12.

160 Transcript of 7 April 2022 p 108 ln 20 to p 109 ln 13.

110 In respect of the alleged 8 November 2019 threat, the evidence showed that SSI Mazlan was never alone with the accused at any point in time during the interview between 12.55 p.m. and 1.55 p.m. It was not disputed that ASP Ng was present at the interview; and that a second police officer was also present – although the Prosecution and the Defence disagreed on whether this second police officer was Sgt Shahrel and whether he stayed for the entire interview. I accepted Sgt Shahrel's evidence that he was the second police officer present. The accused admitted that he was unable to identify the officer whom he claimed "looked like Chinese".[161] Sgt Shahrel had no reason to lie about being present in the interview room; and he had in any event a cogent explanation for why he entered the interview room: he was there to take over from ASP Ng, to escort the accused. ASP Ng testified that Sgt Shahrel entered the interview room towards the last 15 minutes of the interview, and that he himself left the room when Sgt Shahrel arrived, as he had to take over the van for the accused's transport.[162] Sgt Shahrel could not remember what time he entered the room, but he recalled that the interview was still ongoing when he entered, and that ASP Ng left the room after his arrival.[163]

111 Both ASP Ng and Sgt Shahrel were firm in testifying that they did not witness SSI Mazlan making any threat to the accused during the interview in the Woodlands Police interview room on 8 November 2019. In fact, ASP Ng described SSI Mazlan as having spoken to the accused in a professional and courteous manner during the interview. The Defence did not suggest any reason why ASP Ng and/or Sgt Shahrel should have lied to cover up any threats made by SSI Mazlan. I was also satisfied that there could not have been any collusion

161 Transcript of 7 April 2022 p 41 ln 25 to p 42 ln 14.

162 Transcript of 6 April 2022 p 54 ln 11 to ln 12.

163 Transcript of 6 April 2022 p 140 ln 2 to ln 25.

between these three witnesses: SSI Mazlan, for example, did not even recall Sgt Shahrel being present in the interview room and did not mention him at all.

112 In respect of the alleged 11 November 2019 threat, the accused's allegation about ASP Ang having left the interview room immediately after the conclusion of the statement-recording was refuted not only by ASP Ang himself but also by the Malay interpreter Mdm Sapiahtun, who was certain that ASP Ang had not left her alone in the interview room with the accused at any point in time. There was no reason for Mdm Sapiahtun to lie about this issue.

113 Further, the accused's story about having been brought out of the regional lockup area to another room on a higher floor was entirely refuted by the objective evidence of the ESD entries and the unchallenged testimony of Insp Shahril**.** The relevant ESD entries clearly indicated the accused being escorted to Interview Room 5 at 4.23pm on 11 November 2019 and then being returned to his cell in the lock-up area at 7.28pm on the same day. As Insp Shahril pointed out, if the accused had been brought out of the regional lock-up in the basement of the PCC building to another floor of the building, and if he had then been returned from another floor to his cell in the regional lock-up, these movements would certainly have been reflected in the EDS[164] – and yet there was no evidence at all in the ESD of such movements. This showed that the accused's story about being brought to a 14th or 16th floor room and being threatened by Insp Daniel Lim in that room was a pack of lies.

114 As the Prosecution also highlighted in their cross-examination of the accused, the account he gave in the ancillary hearing of the events on 11 November 2019 contradicted the account provided in his Case for the Defence

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[164] Transcript of 6 April 2022 p 126 ln 25 to ln 28.

as well as the Further Case for the Defence. Most significantly, the Case for the Defence dated 31 January 2022 had stated that he was first returned to his cell on 11 November 2019 before being brought out again "some time in the night" to "a room".[165] This version of events was strikingly dissimilar from the version the accused related in the ancillary hearing, which featured "four to five police officers" coming to Interview Room 5 after the conclusion of his statement-recording, and bringing him from that room directly to another room on the 14th or 16th floor. When asked about the discrepancies, the accused blamed them on his own counsel, claiming that counsel had not only made a mistake in the Case for the Defence but had told him to "just explain to the court" instead.[166] Tellingly, in his submissions at the close of the ancillary hearing, counsel did not even rely on this testimony by the accused. Instead, counsel sought to suggest that the accused's own recollection of events might be somewhat imperfect– which suggestion, with respect, was never even made by the accused himself.[167]

115 Finally, as the Prosecution pointed out, despite having been purportedly "frightened" and "worried" by the threats from SSI Mazlan and Insp Daniel Lim, the accused made no complaints at any point in time – not to any police officer, nor to any interpreter, nor to the doctors who examined him before and after each of his statements – and not even to his own (former) counsel Mr Muzammil. Indeed, it was not disputed that he told his present counsel about the alleged threats only in December 2021 – more than half a year after counsel's appointment and just a few months before the commencement of the trial. The accused claimed that this was because after "the incident" (*ie*, Izz's

165 Case for the Defence filed 31 January 2022.

166 Transcript of 7 April 2022 p 83 ln 1 to ln 15.

167 Transcript of 7 April 2022 p 106 ln 23 to 25.

death) had occurred on 8 November 2019, he was still "grieving the death of Izz" and had a "lot of things running" through his mind: as such, he did not think of complaining to anyone about the alleged threats.[168] While this might have sounded like a plausible explanation for his failure to make any complaint in the days immediately following Izz's death, it could not explain his failure to mention the alleged threats to his former counsel Mr Muzammil during the entire time that the latter was representing him. In this connection, as noted earlier, when asked to explain his failure to mention the alleged threats to Mr Muzammil, the accused claimed that it was because the threats had continued "playing on [his] mind", and he felt he had to "stick to [his] imaginary story". He added that he also did not know at the time that the words uttered by SSI Mazlan and Insp Lim were threats.[169] Neither reason made sense. First of all, on the accused's own evidence, what SSI Mazlan and Insp Lim had communicated to him by their threats was that if he did not change his statement such that he jettisoned his story of an accidental fall, he would be facing the death penalty. However, it was not disputed that by the time the accused came to be represented by Mr Muzammil, he had already been charged with an offence punishable with the death penalty – *ie*, the offence of murder. There was thus no reason by that stage for the accused to hold back from telling Mr Muzammil about the threats, since the "evil" allegedly threatened by SSI Mazlan and Insp Lim had already come to pass. Indeed, since the accused claimed that he had told Mr Muzammil that the story about his pushing Izz's head against the floorboard was "not the true version",[170] *a fortiori* he could and should have explained to the latter why he had told such a story to the police.

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168 Transcript of 7 April 2022 p 74 ln 15 to ln 28.

169 Transcript of 7 April 2022 p 27 ln 15 to p 28 ln 20.

170 Transcript of 7 April 2022 at p 27 ln 10 to ln 14.

116 As for the accused's assertion that he did not know at the time that the words spoken by the two officers constituted "threats", I did not see why this purported ignorance of the law should have prevented him from telling Mr Muzammil about the officers' alleged conduct. Whatever the legal label to be applied to that alleged conduct, the bottom line was that the accused had – on his own evidence – been very "frightened" and "worried" by the things they said; and in Insp Lim's case, the verbal statements had even been accompanied by physical violence (*ie*, throwing a bottle full of water at the accused such that it hit his left cheek). There was every reason for the accused to bring these matters up to his then counsel. The fact that he failed to do so – and had no coherent explanation for his failure to do so – strongly suggested that the alleged 8 November 2019 threat and the alleged 11 November 2019 threat never happened.

117 To sum up on the first limb of the two-stage inquiry into voluntariness, therefore: on the evidence before me, I was satisfied that the alleged 8 November 2019 threat and the alleged 11 November 2019 threat never in fact happened. I was satisfied that neither SSI Mazlan nor Insp Daniel Lim made any threats (or for that matter, any inducements or promises) to the accused on 8 November 2019 and 11 November 2019 respectively.

118 Having made this finding, it was not necessary for me to consider the second stage of the two-stage inquiry into voluntariness. However, in the interests of completeness, I should make it clear that I did consider this second stage; and I was satisfied that even assuming the alleged threats had been made, the Prosecution would in any event also have been able to clear the second stage of the inquiry. As the CA noted in *Sulaiman* (at [39] – [40]), this is the subjective limb of the inquiry: at this stage, the court "will consider all the circumstances, including the personality and experience of the accused person, when it decides

whether and how any inducement, threat of promise has affected the accused person in the statement-recording process".

119 In this connection, as the Prosecution pointed out, after purportedly having been told that he would face the death penalty if he did not change his story about an accidental fall, the accused actually changed his story to a much *more serious* one about *pushing* Izz's head against the floorboard of the van. The accused claimed that from his point of view, the original "true" story of an accidental fall was "more serious" than the "imaginary story" about his pushing Izz's head against the floorboard because the "true" story involved Izz falling three times.[171] This did not make sense because based on the accused's own narrative, all three falls were not caused by him and were instead the direct result of Izz having fidgeted while being held in the accused's arm. The accused claimed that the three falls showed he had been "careless" or "negligent" – but even if that were true, it still did not explain why an "imaginary story" about *pushing* Izz's head against the floorboard constituted a "less serious" version of events. After all, based on the accused's own account, the act of *pushing* Izz's head against a firm surface was a conscious act; it was neither an accident nor an act of automatism.

120 In his submissions at the close of the ancillary hearing, Defence counsel urged me to "accept" the accused's interpretation on the ground that he was a "layperson" with "his own thinking".[172] It is true that the subjective limb of the two-stage inquiry into voluntariness calls for the court to consider *inter alia* "the personality and experience of the accused person" in deciding whether and how any inducement, threat or promise has affected him in the statement-recording

171 Transcript of 7 April 2022 p 27 ln 29 to p 28 ln 20.

172 Transcript of 7 April 2022 p 108 ln 5 to ln 12.

process (*Sulaiman* at [40]). In the present case, however, I did not see why being a "layperson" – as opposed, presumably, to being a legal professional – would have led the accused to believe that a story about intentionally pushing Izz's head against the floorboard was a "less serious" story than one about Izz falling in an accident (albeit falling "three times").

121 To sum up, therefore: at the conclusion of the ancillary hearing, I was satisfied that the Prosecution had proven beyond reasonable doubt the voluntariness of the seven disputed statements.

122 In the interests of completeness, I did note that in *Sulaiman*, the CA held that apart from the statutory admissibility regime under s 258(3) CPC which focuses on voluntariness, the court retains a residual discretion at common law to exclude statements which – despite having been found to be voluntary within the meaning of s 258(3) – "nonetheless suffer from some form of unfairness in terms of the circumstances and process by which they were obtained" (*Sulaiman* at [45]. In the present case, defence counsel did not make any arguments about invoking the court's exclusionary discretion on the basis of some form of unfairness in the statement-recording process. In any event, there was nothing in the evidence to justify the exercise of the court's discretion to exclude the disputed statements on this separate basis. I noted that in his testimony, the accused made several reference to how he had been "grieving the death of Izz" and "running a lot of things under [his] mind"[173] during the course of police investigations. However, these were references of an extremely vague and general nature: there was nothing in the evidence *per se* to show that the disputed statements suffered "from some form of unfairness in terms of the circumstances and process by which they were obtained".

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173 Transcript of 7 April 2022 p 12 ln 5 to ln 11.

123 At the end of the ancillary hearing, therefore, I admitted all seven disputed statements into evidence.

Close of the Prosecution's case

124 At the close of the Prosecution's case, the Defence did not make a submission of no case to answer. As I was satisfied that the Prosecution had made out a *prima facie* case against the accused on the charge of murder under s 300I PC, I called on the accused for his defence. He elected to give evidence and also called his sister, Nur Atikah binte Mohamed Yusoff ("Atikah") to give character evidence on his behalf.

The evidence led by the defence

The accused's evidence

(1) Background

125 The accused gave evidence that he had started a relationship with Nadiah in September 2019 and that he had also first met Izz in September 2019. He claimed that he had treated Izz as "[his] own son", and that the three of them had gone for meals, outings and staycations on various occasions.[174] He had also started a delivery business together with Nadiah and her brother Faris, for which he had bought a Toyota HiAce van.[175] Faris was the guarantor for the vehicle loan taken out by the accused in respect of this van. This was the same van he was driving on 7 November 2019.

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174 Transcript of 13 April 2022 at p 5 ln 24 to p 25 ln 15.

175 Transcript of 13 April 2022 at p 7 ln 16 to ln 30.

(A) THE DINNER AT WISTERIA MALL

126 On 7 November 2019, the accused met with Nadiah and Faris at the void deck of their parents' flat. After getting Faris to sign the guarantor documents for the vehicle loan, the accused drove to Sin Ming with Nadiah and Izz in the van, to hand the guarantor documents to the van dealer.[176] Thereafter, he had dinner with Nadiah and Izz at a Long John Silver outlet at Long Wisteria Mall. It was during the dinner that Izz spilled a drink on the accused and started to cry. The accused claimed, however, that he "wasn't angry with Izz at all" as Izz was "a 9 months old boy" and "too small".[177] After he had cleaned Izz up, he brought Izz down to the basement carpark, handed Izz back to Nadiah when Nadiah came to the carpark, and drove them to her parents' flat in Choa Chu Kang.[178]

127 In cross-examination, the accused was referred to a series of WhatsApp messages[179] which he had exchanged with Nadiah between 10.36 p.m. and 10.43 p.m. on 7 November 2019 (*ie* after he had dropped her off at her parents' flat); in particular, to a message from Nadiah at 10.36 p.m. in which she had said to the accused (*inter alia*), "Sorry about just nw [*sic*]", and another message from her at 10.38 p.m. in which she had said (*inter alia*), "Please don't give up on me or Izz. I want you not to feel pissed off easily. I want you to be more patience [*sic*] n gv me time to learn being an independent mum". The accused disagreed that Nadiah's messages were in reference to the incident at Long John Silver where Izz had spilt the drink on the accused. He also denied that he had been upset when Izz spilt the drink on him. According to the accused, he had no idea

176 Transcript of 13 April 2022 at p 8 ln 10 to p 9 ln 31.

177 Transcript of 13 April 2022 at p 10 ln 12 to ln 15.

178 Transcript of 13 April 2022 at p 19 ln 20 to ln 32.

179 Exhibit P-84.

what Nadiah was referring to when she spoke of not wanting him to "feel pissed off easily" and had simply replied "I won't, awak" (meaning "I won't, dear") without thinking much.[180]

128 According to the accused, when he sent Nadiah back to her parents' flat on the night of 7 November 2019, she was the one who had asked him to look after Izz for the night, as she needed to work the following day.[181] After the accused agreed, she handed over Izz and some "baby stuff" to him before leaving for her brother's flat in a Grab vehicle. This was how the accused came to be alone with Izz on the night of 7 November 2019.[182]

(B) THE EVENTS WHICH OCCURRED AT THE YISHUN MSCP

129 The accused's initial plan was to head to his parents' home in Yishun and to bring Izz with him into his brother's bedroom. After parking the van in the Yishun MSCP, he texted his father to say that he wanted to bring Izz home for the night. However, he understood from his father's replies that it was "not a convenient time" for him to bring Izz back to the flat. He decided to inform Nadiah of this and to return Izz to her, but he did not do so immediately.[183] Instead, he left Izz in the rear cabin of the van and went to the nearby Sheng Siong supermarket to "buy some items, such as tissue roll, wet tissue and a can of Red Bull".[184]

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180 Transcript of 14 April 2022 at p 3 ln 25 to p 8 ln 7.

181 Transcript of 13 April 2022 at p 11 ln 4 to ln 9.

182 Transcript of 13 April 2022 at p 11 ln 2 to ln 31.

183 Transcript of 13 April 2022 at p 12 ln 13 and p 23 ln 12 to p 26 ln 9.

184 Transcript of 13 April 2022 at p 12 ln 13 to ln 25.

130 On returning from the supermarket to the van in the Yishun MSCP, the accused found Izz in a "crawling position" and crying" inside the rear cabin of the van. He also saw a red plastic bag on the floor of the rear cabin, with some of its contents "spilt out". At this point, although he had initially intended to return Izz to Nadiah, he decided that he would "bring Izz straight to [his] parents' flat" and "convince [his] parents" to allow Izz to stay over. This was because he felt "pity for Izz as Izz [had] no place to sleep".[185] As to the sequence of events which occurred next, the accused's evidence at trial was as follows:

> So, I took a red plastic bag into my left hand, Izz was into my right arm, Izz's face facing me, and Izz's buttock was onto my forearm resting. And at the same time, when I tried to close the right sliding door using my full strength, at this time Izz was fidgeted. As I lost balance, Izz accidentally fell from my arm. I saw Izz's head hit onto the floorboard first, Izz hit a second time on the footstep, I mean the footrest, before falling onto the floor. If I can remember, Your Honour, Izz's face was facing downwards on the floor and it happened so fast, Your Honour, and then I couldn't save Izz.[186]

131 The accused estimated that just before Izz's fall, the distance between Izz's position on the accused's arm and the plywood floorboard of the van was about 50 centimetres.[187] After the fall, he picked Izz up. Izz was "crying" at this time, and the accused placed him back in the rear cabin of the van, in "a crawling position". He then tried unsuccessfully to call Nadiah.[188] When she finally called him back, he told her that he wanted to meet her and she agreed. At this point, he did not "call the ambulance or bring Izz… to the hospital", because he felt

185 Transcript of 13 April 2022 at p 27 ln 16 to p 29 ln 13.

186 Transcript of 13 April 2022 p 29 ln 14 to ln 21.

187 Transcript of 13 April 2022 at p 33 ln 24 to ln 27.

188 Transcript of 13 April 2022 p 29 ln 22 to ln 24, p 34 ln 1 to ln 20.

"very panicky" and thought that it was his "responsibility to inform the mother of the child" about the fall.[189]

(C) THE EVENTS WHICH OCCURRED AFTER THE ACCUSED MET UP WITH NADIAH

132 The accused admitted that when he met up with Nadiah, he had lied to her at first about how Izz had fallen: he told her that he had been playing with his phone while Izz was at the rear cabin, and Izz had crawled out of the van and fallen on the floor. He claimed that he told Nadiah these lies because he did not want her to accuse him of neglecting Izz. Thereafter, he brought her to the rear cabin and handed Izz over to her.[190] He claimed that at this point, Izz was "still alive, still responsive". He then decided to "come clean with Nadiah": he told her that Izz had "fidgeted" and "accidentally" fallen from his arm "onto the floorboard first, hit his head the second time on the footstep, which is the footrest, before falling onto the floor". [191]

133 The accused also admitted that he had driven "aimlessly" for a while, but said that this was because he had been "looking for a spot to have a quick pee". At one point, he stopped the van "somewhere near Clementi" to "have quick pee under the tree". He then drove off again but subsequently stopped the van "somewhere near to JCube". At this time, Nadiah was carrying Izz in the baby carrier which was strapped around her. The accused asked her "how long" the injury on Izz's forehead would take to heal, and she told him that "it wouldn't be so fast". According to the accused, he knew that Izz was still responsive at this point because he could see that "Izz's hand was moving". At the same time, he was talking to Nadiah about their delivery business and how

189 Transcript of 13 April 2022 p 35 ln 14 to ln 20.

190 Transcript of 13 April 2022 p 38 ln 23 to p 39 ln 3.

191 Transcript of 13 April 2022 p 38 ln 23 to p 39 ln 12.

he would "arrange" the business. Following this "short conversation", they both realised that "Izz looked very weak". The accused denied that he deliberately delayed going to NUH:[192] in fact, he claimed that he was the one who told Nadiah they should send Izz to NUH.[193]

134 In cross-examination, the accused denied having told Nadia "Izz tak ada".[194] He also denied having suggested to her that they should pay someone to bury Izz and then report to the police a year later that Izz was missing.[195] When asked if he knew of any reason why Nadiah should have given evidence about his making such a suggestion, the accused alleged that while he was in remand, he had met Nadiah's cousin (who was also in remand); and the latter, knowing of their relationship, had told him that Nadiah "was remanded at [PCC] lockup, and… [she] was threatened by the IO because the IO accused her involved [*sic*] in Izz's death".[196]

135 As to their trip to NUH, the accused admitted that before they went to NUH, he had told Nadiah that if the hospital were to ask what had happened, she was to tell them that Izz had fallen from his arm. On being referred to Nadiah's conditioned statement,[197] he admitted that he had told Nadiah to tell the hospital that Izz had "suddenly fidgeted" before falling; that Izz had hit his head, bounced, and hit his head a second time on the footstep before falling on the floor; that Izz's body had still been warm, with a weak pulse, at 1 a.m.; that he had performed CPR on Izz; that he had not summoned an ambulance because

192 Transcript of 13 April 2022 p 93 ln 20 to ln 23.

193 Transcript of 13 April 2022 p 39 ln 12 to p 41 ln 26.

194 Transcript of 13 April 2022 p 45 ln 19.

195 Transcript of 13 April 2022 p 45 ln 22 to ln 27.

196 Transcript of 13 April 2022 p 88 ln 14 to p 89 ln 28.

197 Transcript of 13 April 2022 p 45 ln 6 to ln 7.

he had called Nadiah instead; that Izz had still been warm when she met with him; and that they had proceeded to the hospital after Izz started to turn cold.[198] His explanation for having told Nadiah what to tell the hospital was that since she was "not there" when the accident occurred and did not know anything, he was "just brief[ing]" her on what he described as the "true version" of events.[199] In cross-examination, he admitted that he had told Nadiah to say that he had given Izz CPR even though it was not true, because he was afraid of being accused of neglecting Izz.[200]

(D) THE EVENTS AT NUH

136 As to their arrival in NUH, the accused was asked in cross-examination why he had not driven straight to the driveway of the A&E to seek immediate medical assistance. He claimed that at that point in time, it had occurred to him that he could not park his van in the A&E driveway, which was why he drove to the basement carpark instead. Asked why he had not thought of dropping Nadiah off at the A&E driveway before driving the van to the carpark, he said he "didn't think much", but denied that this demonstrated his lack of interest in getting medical attention for Izz.[201] The accused also denied that he had spent time wiping his face and brushing his teeth after parking the van in the basement carpark. It was not disputed, however, that the screenshots of the CCTV footage in the basement carpark[202] showed a 16-minute gap between the time when he parked his van (3.35 a.m.) and the time when he left the van with Nadiah (3.51 a.m.). The accused at first said that he could not remember what he was doing

198 Transcript of 13 April 2022 p 45 ln 28 to p 47 ln 24.

199 Transcript of 13 April 2022 p 46 ln 3 to ln 10.

200 See transcript of 13 April 2022 p 92 ln 12 to p 93 ln 3.

201 Transcript of 13 April 2022 p 97 ln 10 to p 98 ln 19.

202 Exhibit P-91.

during that time. Then, when the relevant passages from Nadiah's conditioned statement were read back to him,[203] he said he recalled that he had been looking for his "spare phone" but "the rest [he] can't remember".[204]

137 The screenshots of the CCTV footage in the basement carpark[205] further showed that although the accused left the van with Nadiah at 3.51 a.m., the two of them only arrived at the A&E at 4.11 a.m. The accused admitted that he had spent the intervening period of time looking for a spot to dispose of his mobile phone. He said that this had been a "mistake", but denied that it was because he already knew at the time that Izz was dead and that there was therefore no emergency: according to him, even between 4.02 a.m. and 4.11 a.m, when he was walking outside NUH to dispose of his mobile phone, he had still believed that Izz was "alive but in a weak condition".[206]

(E) THE ACCUSED'S CAUTIONED STATEMENTS

138 In cross-examination, the accused was also questioned *inter alia* about his cautioned statements. In his cautioned statement of 8 November 2019,[207] he had stated in response to a charge of voluntarily causing grievous hurt to Izz by "slamming [Izz's] head against the floorboard" of the van that –

> I don't have the intention to do this to the child. I'm remorseful. I love the child and I will miss the child forever. I hope your Honour to plea for leniency. I am still young and have a long way to go. I will take note that such thing won't happen again in the future. That's all.

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203 Conditioned Statement of Nadiah Bte Abdul Jalil at AB pp 112 – 116, paras 10 and 16.

204 Transcript of 13 April 2022 p 99 ln 15 to p 101 ln 15.

205 Exhibit P-91.

206 Transcript of 13 April 2022 p 101 ln 16 to p 105 ln 25.

207 Exhibit P-97.

139 When it was pointed out to him that he had expressed remorse and pleaded for leniency in response to the charge of "slamming" Izz's head "against the floorboard" of the van, the accused claimed that he had said it "wrongly" because he had been "scared" after being shouted at by "a few of the police officer who interviewed" him. When it was pointed out to him that only DSP Cyndi Koh had interviewed him for this cautioned statement on 8 November 2019, the accused said that it was the "few police officer… escorting [him] here and there" who had shouted at him. He claimed that these officers had asked him "a lot of questions" about "what actually happened", and that they had told him he "better tell [them] the truth… better show some remorse". When it was pointed out to him that he had been warned prior to the statement-recording about the potential consequences of failing to reveal any fact or matter in his defence, he said that he had not paid attention to what was read out to him during the statement-recording as he had still been "grieving the death of Izz" at the time.[208]

140 As for his cautioned statement of 14 November 2019,[209] in response to a charge of murder, the accused had stated –

> I have no intention of killing Izz Fayyaz at all. I didn't plan to commit any crime. I did not plan to commit this murder case. I love kids. And why would I intentionally kill him? I did it in the moment of ~~anger~~ frustration after hearing him crying. I would like to plead for lenience and I hope that the Judge will give me a second chance. I am still young and have a long way to go. I am sorry for my action and I am remorseful.

141 As seen from above, the word "anger" in the statement was cancelled and replaced by the word "frustration". The accused claimed that the word "anger" had been supplied by the officer recording the statement, ASP Desmond

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208 Transcript of 13 April 2022 p 61 ln 8 to p 69 ln 10.

209 Exhibit P-100.

Ng, who had asked him, "You did it in a moment of anger?" According to the accused, he had told ASP Ng that it was "not because of anger"; and he had asked ASP Ng to delete the word "anger" and to replace it with the word "frustration" – but although he himself was the one who had said the word "frustration", he had said it "wrongly", and he did not know why this word had "suddenly…[come] out from [his] mouth".[210]

142 The accused was then referred to the statement recorded from him by ASP Ang on 13 November 2019 at 9.45 a.m.,[211] in which – in response to a question as to what was in his mind when he pushed Izz's head towards the floorboard - he had initially stated that he "was not thinking of anything" and that he "was "*rimas*" [a word which he had explained as meaning "uneasy"] over Izz's crying, before deleting the words "over Izz's crying". According to the accused, he had "answered wrongly" when questioned by ASP Ang. He disagreed that he had asked ASP Ang to delete the words "over Izz's crying" after realising that this might be incriminating.[212]

143 The accused was also referred to Dr Cheow's IMH report, in which the latter had recorded, *inter alia*, the initial account of events provided by the accused at his first interview. In the initial account documented by Dr Cheow, the accused had referred to Izz crying and had reported feeling "uncomfortable" due to Izz "constantly interrupting him".[213] The accused did not dispute the account recorded in these passages in Dr Cheow's report: his response was[214] –

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210 Transcript of 13 April 2022 p 71 ln 1 to p 73 ln 6.

211 Exhibit P-99.

212 Transcript of 13 April 2022 p 74 ln 4 to ln 28.

213 AB at pp 89 – 90, paras 13 – 25.

214 Transcript of 13 April 2022 p 76 ln 16 to p 77 ln 7.

> It's just a word… Even though I say it wrongly or be it I said it rightly, when I packed the babys stuff, the baby might be constantly interrupting me, but that doesn't mean I get angry with Izz… I wasn't angry with Izz… (I)t's normal for children to cry at their age. So I disagree when the DPP told me that to stop him from crying, I pushed Izz's head towards the floorboard.

(2) Nur Atikah binte Mohamed Yusoff ("Atikah")

144 Atikah is the accused's sister.[215] She gave character evidence on behalf of the accused. In gist, she stated that the accused "loves children", that he would help to take care of her daughter when she was at work, that he was a hardworking person who had been "venturing into his new business", and that he had "quite a bright future".[216]

Recall of certain prosecution witnesses

145 At the conclusion of the defence case, the Prosecution applied under s 283 CPC to recall four witnesses.

146 First, it will be recalled that the accused had made allegations regarding the insertion and cancellation of words in the cautioned statement recorded by ASP Desmond Ng. In this connection, the Prosecution applied to recall ASP Desmond Ng and the Malay interpreter, Ms Maria bte Bazid ("Ms Maria").[217]

147 ASP Desmond Ng testified that the cancellation of the word "anger" and the substitution of the word "frustration" were made while he was writing out the paragraph as it was interpreted to him in English by the interpreter who was then interpreting for the accused. The interpreter had conveyed the words

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215 Transcript of 14 April 2022 p 14 ln 15.

216 Transcript of 14 April 2022 p 18 ln 21 to p 19 ln 3.

217 Transcript of 14 April 2022 p 20 ln 3 to ln 27.

"anger" and "after hearing him crying" while she was interpreting for the accused.[218] In cross-examination, it was put to ASP Desmond Ng that he was the one who had written the words "I did it in the moment of anger"; and that when he read the statement to the accused, the latter had told him to delete the word "anger" and to put in the word "frustration" instead. ASP Desmond Ng disagreed that this was what had happened.[219]

148 Ms Maria testified that the accused spoke in a mixture of English and Malay during the recording of the cautioned statement.[220] The "standard practice" was that if the accused spoke in English, she would "leave it be"; whereas if the accused spoke in Malay, she would interpret the Malay words into English.[221] The word "anger" would have come from the accused: either the accused would have said this in English himself, or if he had said it in Malay, she would have interpreted it in English to ASP Desmond Ng. The cancellation of the word "anger" and the substitution of the word "frustration" would have been requested by the accused himself. As for the words "after hearing him crying", these were uttered by the accused himself in Malay and interpreted into English by Ms Maria.[222] According to Ms Maria if the accused had not used the word "anger", that word would not have been written down. Similarly, if he had not said the words "after hearing him crying", these words would not have been written down either.[223]

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218 Transcript of 14 April 2022 at p 24 ln 26 to p 25 ln 13.

219 Transcript of 14 April 2022 p 26 ln 30 to p 27 ln 16.

220 Transcript of 14 April 2022 p 33 ln 6,

221 Transcript of 14 April 2022 p 32 ln 12 to ln 22.

222 Transcript of 14 April 2022 p 29 ln 24 to p 31 ln 17.

223 Transcript of 14 April 2022 p 34 ln 20 to p 35 ln 12.

149 Second, it will be recalled that when he was asked if he knew of any reason why Nadiah would lie about his having suggested that they pay someone to bury Izz first before reporting him missing a year later, the accused had made allegations about Nadiah's possible motive: according to the accused, he had heard from Nadiah's cousin that Nadiah had been remanded and that she had even been threatened by the IO. The suggestion appeared to be that Nadiah must have wanted to shift any blame for Izz's death away from herself by pinning it on the accused. In this connection, the Prosecution applied to recall Nadiah and ASP Ang.[224]

150 ASP Ang testified that he had never, at any point in his interaction with Nadiah, accused her of being involved in Izz's death.[225] He also denied that Nadiah had been arrested or remanded in PCC or kept in the PCC lock-up at any point.[226]

151 As for Nadiah, she too testified that she had not been arrested nor remanded in connection with Izz's death.[227] While the police had asked her if she was involved in Izz's death,[228] this was when they were interviewing her in order to find out "the background of what happened": the IO had not accused her of being involved in Izz's death; and she believed that they knew – after she gave her statement – that she was not involved.[229] According to Nadiah, she had

224 Transcript of 14 April 2022 p 20 ln 31 and p 21 ln 19.

225 Transcript of 14 April 2022 p 36 ln 18 to ln 28.

226 Transcript of 14 April 2022 p 36 ln 32 to p 37 ln 5 and p 38 ln 26 to ln 27.

227 Transcript of 14 April 2022 p 40 ln 15 to ln 18; p 44 ln 27 to p 45 ln 1.

228 Transcript of 14 April 2022 p 45 ln 29 to ln 32.

229 Transcript of 14 April 2022 p 45 ln 14 to ln 32.

not told her cousin anything about being threatened by the IO; and in fact, she had not contacted her cousin for "quite some time".[230]

152 The trial concluded with Nadiah's evidence on recall.

The law relating to s 300(c) Penal Code

153 *Per* s 300(*c*) of the PC:

> Except in the cases hereinafter excepted culpable homicide is murder –
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

154 In *Wang Wanfeng v Public Prosecutor* [2012] 4 SLR 390 ("*Wang Wanfeng*"), the CA – citing *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") as well as its earlier decisions in cases such as *Tan Chee Wee v PP* [2004] 1 SLR(R) 479 ("*Tan Chee Wee*") – held (at [32]) that the ingredients of the offence of murder under s 300(*c*) were as follows:

(a) A death has been caused to a person by an act of the accused;

(b) That act resulting in bodily injury was done with the intention of causing that bodily injury to the deceased; and

(c) That bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

155 As the CA explained in *Wang Wanfeng* (at [61]), the *mens rea* of the offence is the intention to inflict the particular bodily injury, whereas the *actus*

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230 Transcript of 14 April 2022 p 45 ln 14 to ln 17.

reus is the actual infliction of that bodily injury: the "intention to injure and the actual bodily injury caused coalesce in the single act of inflicting the injury"; and if the bodily injury so caused is sufficient in the ordinary course of nature to cause death, murder has been committed under s 300(*c*) as a matter of course.

156 In the recent case of *Public Prosecutor v Azlin bte Arujunah & another* [2022] SGCA 52 ("*Azlin*"), the CA reiterated the above elements of the offence under s 300(*c*). In *Azlin*, the CA held (at [133]) that to establish murder under s 300(*c*) against the accused persons in that case, the prosecution would have to establish, first, the cause of death – *ie*, death must have been caused by the accused as a result of acts carried out by the accused (in *Azlin*, the pouring of very hot water on the deceased – their young son – thereby causing severe scalding injuries); second, the intention to cause the injury, which "is a subjective inquiry pursuant to the well-established test laid down in *Virsa Singh*"; and third, the consequences of the injury, which is an objective inquiry, *ie*, whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause death.

157 In respect of the *mens rea* required under s 300(*c*), the CA has made it clear in numerous cases that it is not necessary for the accused to have known or intended the potentially fatal consequence of inflicting the bodily injury; it is sufficient that the accused intentionally caused the particular bodily injury inflicted (*Wang Wanfeng* at [33], citing *Tan Chee Wee* at [42] – [32]). As the CA in *Tan Chee Wee* put it, s 300(*c*) "envisions that the accused subjectively intends to cause a bodily injury that is objectively likely to cause death in the ordinary course of nature" (at [42]). In *PP v Lim Poh Lye and another* [2005] 4 SLR(R) 582 ("*Lim Poh Lye*"), the CA elaborated on the test in the following terms:

> 22 As stated in *Virsa Singh*, for an injury to fall within s 300(*c*), it must be one which, in the normal course of nature, would cause death and must not be an injury that was accidental or unintended, or that some other kind of injury was intended. Whether a particular injury was accidental or unintended is a question of fact which has to be determined by the court in the light of the evidence adduced and taking into account all the surrounding circumstances of the case. If the court should at the end of the day find that the accused only intended to cause a particular "minor injury", to use the term of the court in *Tan Joo Cheng*, which injury would not, in the normal course of nature, cause death, but, in fact caused a different injury sufficient in the ordinary course of nature to cause death, cl (*c*) would not be attracted.
>
> 23 It would be different, if the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury. Thus, if the offender intended to inflict what, in his view, was an inconsequential injury, where, in fact, that injury is proved to be fatal, the offender would be caught by s 300(*c*) for murder. The statement in *Tan Joo Cheng* quoted above at [21] does not appear to differentiate between this situation and that described in [22] above.

The first element of the s 300(c) charge

158 In respect of the first element of the s 300(*c*) charge in the present case, the Prosecution bore the burden of proving that Izz's death was caused by an act of the accused. The *actus reus* alleged against the accused in this case was the act of pushing Izz's head against the floorboard of the van twice, on the night of 7 November 2019. This was denied by the accused, who claimed that Izz's death was caused – not by any act on his part – but by an accidental fall in which Izz had "suddenly fidgeted" and fallen head-first from the accused's arm onto the floorboard of the van, then onto the footrest, and finally onto the ground. Having considered the evidence adduced, I found that Izz's death was in fact caused by the accused's act of pushing Izz's head against the floorboard twice; and I rejected the accused's account of events. I explain below the reasons for this finding.

The accused's statements

159 First, the Prosecution's case in relation to the *actus reus* of the present offence was based in part on the accused's own statements. In several of the statements given to the police, the accused described how he had used his hand to "hold [the] back of Izz's head" before pushing Izz's head against the floorboard of the van twice: see for example the statement recorded from the accused at 7.40 p.m. on 8 November 2019,[231] the statement recorded from the accused at 10.45 a.m. on 12 November 2019[232] and the statement recorded from the accused at 4.35 p.m. on 21 November 2019.[233] The statement of 21 November 2019 also referred to photographs of the accused's re-enactment of the incident, in which the accused demonstrated how he had first held Izz's head in such a way that Izz's head "hit the edge of the floorboard" with the left side of his face "touching the floorboard", and how he had held Izz's head a second time and "pushed it towards the floorboard" such that "Izz hit the centre of the floorboard with his face down".

160 At trial, the accused disavowed all the statements in which he had given evidence about pushing Izz's head against the floorboard. According to the accused, the "true version" was that of the accidental fall, as recounted in the Case for the Defence dated 31 January 2022 and in his testimony at trial. The Defence argued that despite having admitted to pushing Izz's head against the floorboard in the above statements, the accused had also given the police his "accidental fall" version in the statement recorded on 11 November 2019 at 4.30 p.m.: the implication of this argument appeared to be that since the accused had

231 Exhibit P-96.

232 Exhibit P-98.

233 Exhibit P-102.

given the police another account which was inconsistent with the account of his act of pushing Izz's head, the latter must be false, or at least unreliable.

161 Insofar as the accused has given inconsistent versions of events in his statements, the CA has held that where there exist inconsistencies and shortcomings in an accused's statements (*eg*, the statements contain inconsistencies when compared to each other), the trial judge is entitled to rely on such parts of the statements as he thinks can be relied on, and to decide which, if any, of the inconsistent portions represent the truth: *Thongbai Naklangdon v PP* [1996] 1 SLR(R) 55 at [47].

162 I have already explained elsewhere in these written grounds my reasons for finding in favour of the voluntariness and admissibility of those statements on which the accused recounted pushing Izz's head twice against the van floorboard. At the end of the trial, I decided that full weight should be given to those statements. I set out below the evidence in this case which bore out the account given in those statements – and which refuted the accused's account of an "accidental fall".

The medical and forensic evidence

163 The evidence of the forensic pathologist, Dr Gilbert Lau, was that the cause of death was traumatic intracranial haemorrhage; and that this injury "would be *consistent with the infliction of blunt force trauma to the head and face*".[234] To recapitulate: Dr Lau's evidence was that a "blunt force injury" usually happened when there had been a "blow with a blunt object including say a fist or an arm that is…applied to the relevant part of the body", or when

[234] AB at pp 79 – 85 at para 4.

that part of the body had been "pushed against a hard surface or object".[235] Dr Lau also explained that the blunt force applied to the head would have been transmitted through the skull bones to the brain, causing the rupture of the blood vessels on the surface of the brain[236] – *ie*, the traumatic intracranial haemorrhage; and this traumatic intracranial haemorrhage would have led to death because as it caused pressure to build up within the cranial cavity, the blood supply to the brain would have been increasingly compromised, and ultimately the vital centres of control in the brain stem – such as respiration, heart function and blood pressure – would have been compromised as well.[237]

164 It will be recalled that Dr Lau was taken through the differing accounts given by the accused of what had actually happened to Izz on the night of 7 November 2019 (as summarised by the Prosecution in the set of slides marked as exhibit P106).[238] It will also be recalled that in respect of the accounts which narrated an accidental fall of some sort, Dr Lau testified that if the deceased had indeed fallen head down in the manner described by the accused and with sufficient force to have caused the internal injuries to the brain observed in the autopsy, then one would have expected "some laceration or some linear abrasion of the skull" – but no such laceration or linear abrasion was found in the autopsy.[239] Further, insofar as the accused had recounted an accidental fall involving three points of impact (where Izz had fallen headfirst onto the floorboard, "bounced" off the floorboard, hit the footstep, and then fallen to the ground), Dr Lau stated that he could not see how – if any part of Izz had fallen

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235 Transcript of 12 April 2022 p 13 ln 2 to ln 11.

236 Transcript of 12 April 2022 p 21 ln 3 to ln 12.

237 Transcript of 12 April 2022 p 30 ln 27 to p 31 ln 2.

238 See paras 65 – 74 of this Judgement.

239 Transcript of 12 April 2022 p 44 ln 8 to ln 22, p 46 ln 2 to p 47 ln 6.

onto a hard or firm surface such as the van floorboard – it would have "bounced" off that surface. In particular, if Izz had fallen headfirst onto the floorboard, then "logically, instead of bouncing off, what ought to have happened is that the rest of the body should then simply have fallen onto the floorboard itself", since the head is "a solid structure", even in a child – and "not a sphere that is filled with air nor…a rubber ball".[240]

165 Conversely, in respect of the version of events involving the accused pushing Izz's head against the van floorboard twice, Dr Lau testified that this was "the most compelling account of the events…likely to have led to the death of the deceased". Further, Dr Lau was referred to the photographs showing the accused's re-enactment of the pushing incident in the van,[241] which showed that the accused had first pushed Izz's head to the floorboard in such a way that the left side of his face came into contact with the floorboard, and then picked him up and seated him at the centre of the rear cabin before putting a hand on the top of his head to push him a second time, this time face-down, towards the floorboard. Dr Lau testified that this account of events was consistent with many of the external injuries found on the head (the bruising of the left temporalis muscle, the external injuries on the forehead), as well as the internal injuries of the scalp.[242] He was of the opinion that there would have been two discrete points of impact to the head in this case: one to the front of the head and one to the left side of the head.[243] In his words:[244]

> (B)oth actions, pushing the child first, the left side of the head against the floorboard, and subsequently the front of the head

240 Transcript of 12 April 2022 p 45 ln 4 to ln 30.

241 Exhibit P-4(20) – (22); Transcript of 12 April 2022 p 49 ln 8 to ln 26.

242 Transcript of 12 April 2022 p 49 ln 26 to p 50 ln 17.

243 Transcript of 12 April 2022 p 51 ln 4 to ln 9.

244 Transcript of 12 April 2022 p 50 ln 13 to ln 18.

> against the floorboard, could have caused sufficient deformation of the skull to have resulted in the subdural and subarachnoid haemorrhage that was found at the autopsy.

166 It should be noted that Dr Lau's position was that in addition to the fatal traumatic intracranial haemorrhage, other injuries such as the facial abrasions and bruises as well as the laceration of the frenulum of the upper lip were also indicative of non-accidental injury and consistent with the infliction of blunt force trauma to the head and face.[245] In respect of the laceration of the frenulum of the upper lip, Dr Lau testified that this would constitute a third point of trauma, because in his opinion, this injury "would have been due to a direct blow of some sort to the lips or to the mouth". I accepted Dr Lau's testimony on this score, as he was able to explain why he did not think this injury was the result of an accident. In gist, he explained that it was unlikely that the laceration of the frenulum had been caused either in the process of the child being fed milk or through a fall sustained while crawling. The first scenario was unlikely due to the softness of the teat of a milk bottle.[246] As for the second scenario, if Izz had indeed fallen on his face while crawling, the distance his head would have traversed before hitting the floor would not have been great, and the first point of contact would likely have been his chin and not his upper lip.[247] I should add that although the Defence seemed to think that Nadiah's testimony supported their theory that the laceration of the frenulum occurred when Izz fell on his face while crawling, this was not in fact the case. What Nadiah actually said in cross-examination was that on one occasion, Izz had hit his face "on the floor" while crawling: she had noticed some swelling on his upper lip, but she could

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245 AB at p 85, paras 3 – 4.

246 Transcript of 12 April 2022 p 26 ln 2 to ln 6.

247 Transcript of 12 April 2022 p 56 ln 32 to p 57 ln 11.

not recall when this had occurred,[248] and she also could not recall if his upper lip was still swollen on 7 November 2019.[249] Even taken at its highest, Nadiah's testimony about the *swollen upper lip* sustained by Izz in falling did not in any way translate to evidence of *a laceration to the frenulum of the upper lip*.

167 Dr Lau was not the only medical witness who found the accused's story of an accidental fall to be inconsistent with the injuries found on Izz's body. As noted earlier,[250] evidence was also led from Dr Ian Tan of NUH. The account given by the accused to the NUH doctors involved Izz accidentally falling out of the accused's arm and hitting his forehead on the "edge" of the van before landing "prone" on the concrete car park floor. Dr Tan's evidence was that this account of the mechanism of injury was not consistent with the three "very discrete, well-defined" bruises found on Izz's forehead. In Dr Tan's opinion, if Izz had indeed fallen once on the floorboard and once on the concrete ground (as recounted by the accused at NUH), he would have expected to see two ill-defined bruises instead of the three well-defined bruises observed.[251]

168 For completeness, I noted that Dr Ian Tan did suggest that the alleged dislocation of Izz's left shoulder during sleep could be suspicious, as dislocation would usually follow an injury of considerable impact and force. However, Dr Wong's expert opinion on clavicle fractures in young children appeared to corroborate Nadiah's testimony as to how Izz's shoulder injury had occurred; and Dr Lau too testified that the healing time of bone injuries could be variable. In the circumstances, I accepted that the evidence did not appear to show that

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248 Transcript of 8 April 2022 p 50 ln 2 to ln 29. There are several typos in this portion of the transcript, where the word "lips" was erroneously transcribed as "legs".

249 Transcript of 8 April 2022 p 72 ln 26 to p 73 ln 1.

250 See paras 51 – 54 of this Judgement.

251 Transcript of 6 April 2022 p 6 ln 26 to p 7 ln 18.

the left clavicle fracture was sustained as a result of the events of 7 November 2019.

169 Barring the left clavicle injury, however, the medical and forensic evidence in this case was generally consistent in establishing that Izz's head and facial injuries were fresh and indicative of *non-accidental* injury to the head. It must be noted that the Defence did not call any experts of their own to challenge Dr Lau's evidence. Apart from the issue of the left clavicle injury (on which Dr Lau clarified his position in cross-examination), Dr Lau's evidence on the non-accidental nature of Izz's injuries – and his rejection of the "accidental fall" narrative – remained unrefuted at the end of the trial, as was Dr Tan's rejection of the "accidental fall" story he recorded from the accused.

The evidence of the accused's conduct subsequent to the incident

170 I next considered the evidence of the accused's conduct subsequent to the incident at the Yishun MSCP. Preliminarily, s 8(2) of the Evidence Act 1893 (2020 Rev Ed) ("EA") makes it clear that the conduct of an accused person subsequent to the alleged offence is relevant – and thus, admissible – evidence in the criminal proceedings against that accused. Having considered the evidence of the accused's conduct subsequent to the incident, I found this evidence highly useful in shedding light on the issue of whether the accused committed the *actus reus* of the offence. Essentially, this evidence supported the Prosecution's case that Izz's death was caused by an act of the accused and not by an accidental fall.

171 In this case, while the Prosecution and the accused disagreed on what exactly happened to Izz at the Yishun MSCP, they were agreed on one thing: there was some sort of impact to Izz's head, whether as a result of its being pushed against the van floorboard or through an accidental fall. Indeed, on the

basis of the accused's narrative at trial, there were three discrete points in time at which Izz's head impacted a solid surface: once on the van floorboard, once on the van footrest, and once on the car park floor. In such circumstances, one would have expected the accused to seek swift medical attention for Izz – and yet the evidence showed a striking reluctance on his part to do any such thing. It was not disputed that in the immediate aftermath of the incident, the accused did not call for an ambulance, nor did he bring Izz to a hospital. He also did not seek help from his family members who were at that point in his parents' flat mere minutes away from the Yishun MSCP.[252]

172 The accused claimed that he did none of these things because in his panic at that juncture, he only thought of informing Nadiah about what had happened to her child. However, Nadiah's evidence was that even after she met up with the accused, he appeared reluctant to bring Izz to the hospital A&E: as she put it, he was "driving aimlessly". Even after he told her that "Izz tak ada" (which she understood to mean Izz had passed away) and even after he brought her to the rear cabin to show her Izz's body, he appeared to be "delaying the time to go to the hospital".[253] She realised that Izz was dead when he did not respond to her holding his hands and caressing his head. She was the one who suggested bringing Izz to the hospital, but even then, the accused was "undecided" and "continued driving".[254]

173 The accused, not surprisingly, disputed Nadiah's testimony. According to the accused, he did not tell Nadiah "Izz tak ada" when she came to meet him; and while he admitted having driven around "aimlessly", he claimed that this

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252 Transcript of 13 April 2022 p 79 ln 4 to p 80 ln 26.

253 Transcript of 8 April 2022 p 13 ln 7 to ln 13.

254 AB at p 114, para 13.

was because he had been looking for a spot to "have a quick pee". He claimed that Izz was "still moving" and "still responsive" at this stage; and that it was only sometime later that he and Nadiah "realised that Izz looked very weak". Even then, according to the accused, he was the one who had suggested bringing Izz to the hospital.[255]

174 Having examined the evidence in totality, I accepted Nadiah's testimony and rejected the accused's version of events. The accused's behaviour from the time he drove into the NUH carpark, to the time he and Nadiah reached the A&E department, was captured on CCTV footage. The behaviour shown in this undisputed CCTV footage lent support to Nadiah's testimony that the accused had all along been "delaying the time to go to the hospital". For one, the CCTV footage showed that between the time the accused parked his van and the time when he and Nadiah started walking towards the A&E, there was a time lapse of 16 minutes. Nadiah's evidence was that the accused had spent that time cleaning and grooming himself, as he had expressed worry that he might be remanded by the police. I accepted her evidence. The accused himself, when shown the screenshots of the CCTV footage, appeared stumped and was initially unable to furnish any explanation for the 16-minute time lapse. He subsequently claimed to have been looking for his "spare phone" in the car – but his responses showed that he clearly recognised this story about looking for his "spare phone" could not account for the full 16-minute time lapse, as he conceded that "the rest [he] can't remember". Indeed, he appeared to realise belatedly that given his evidence that he himself had suggested bringing Izz to the A&E when Izz "looked very weak", the 16-minute delay looked incriminating – as he also conceded that he had made a "mistake".[256]

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255 Transcript of 13 April 2022 p 38 ln 23 to p 41 ln 26.

256 Transcript of 13 April 2022 p 99 ln 15 to p 101 ln 10.

175 Further, the CCTV footage showed that despite leaving the van at 3.51 a.m., it was not until 4.11 a.m. that he and Nadiah arrived at the A&E. Nadiah testified that the delay was due to the accused's insistence on looking for a suitable spot to dispose of his mobile phone. The accused did not – and could not –deny this, since the CCTV footage showed him leaving Nadiah waiting at the Kopitiam outlet and even walking out of the NUS compound at one point. When asked about the apparent procrastination on his part, he claimed that "a lot of things" had been running through his mind. This explanation rang false, since his evidence was also that he had believed at the time that Izz was "still alive" but "*extremely weak*". Given his alleged belief, it was unbelievable that he would have spent this length of time looking – twice – for a spot to dispose of his phone.

176 Despite the accused's various glib excuses, therefore, the undisputed CCTV footage of his behaviour upon arrival at NUH showed that he was in no hurry at all to get Izz to a doctor. This evidence also supported Nadiah's assertion that even from the time she met up with the accused, he had appeared to be "delaying the time to go to the hospital".

177 Quite apart from the procrastination and delaying tactics, several other aspects of the accused's conduct post the Yishun MSCP incident supported the Prosecution's case that Izz's death was caused by an act of the accused and not by an accidental fall. First, Nadiah gave evidence that on their way to NUH, the accused had stopped the van and suggested to her that they pay someone to bury Izz before reporting Izz missing to the police "maybe a year later".[257] This idea of concealing the true nature of Izz's death was, by any measure, a shocking one: there was no reason for the accused to have come up with such a proposal

[257] AB at p 115, para 16.

unless there was something about Izz's injuries that was highly suspicious – in other words, non-accidental.

178 The accused denied having made such a suggestion and claimed that Nadiah must have been motivated to fabricate this evidence after being remanded by the police and threatened by the IO. Having seen and heard the evidence given by Nadiah and ASP Ang upon being recalled to the witness stand, I was satisfied that Nadiah was never placed in remand, nor was she ever threatened by the IO (ASP Ang). ASP Ang's evidence was that the police could not remand anyone who was not an accused person:[258] he was not challenged on this point; and it was not disputed that Nadiah was never charged with an offence in respect of Izz's death, or even treated as a suspect (as opposed to a witness).

179 It should also be noted that Nadiah's evidence about the accused's suggestion was contained in her conditioned statement, which was served on the Defence months before the commencement of the trial. Yet the startling accusations about Nadiah's alleged deceitfulness in fabricating evidence and her motive for doing so were never put to Nadiah in cross-examination; nor did the Defence seek at any point to summon as witness the "male cousin" who had purportedly told the accused about her being remanded and threatened. The accusations against Nadiah were made belatedly by the accused when the Prosecution put it to him in cross-examination that he had initially planned to evade arrest and remand by trying to persuade Nadiah to agree to burying Izz in secret. On the evidence before me, I was satisfied that it was the accused himself who was fabricating evidence in coming up with these belated accusations.

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258 Transcript of 14 April 2022 p 37 ln 1 to ln 5.

180 Second, it was not disputed that prior to heading to NUH, the accused had briefed Nadiah on the "accidental fall" story which was to be told to the hospital personnel in the event of any questions. Nadiah gave evidence about this in her conditioned statement;[259] and whilst the accused disagreed with some portions of her account, he admitted in cross-examination having told her to tell the hospital that Izz had accidentally fallen from his arm, and he had also told her the version of events he would be giving the hospital. On his own admission, this was a version which featured Izz "suddenly fidgeting" and falling out of his arm, hitting his head on the van floorboard, bouncing, hitting his head a second time on the footstep, and finally falling head-first onto the floor.[260] That the accused should have had to brief Nadiah in detail about the story to be told to the hospital was not just odd; it was highly suspicious. After all, the accused himself conceded that Nadiah was not present during the incident at the Yishun MSCP: he was the only eyewitness to the incident, and she would not know what had happened. His actions in briefing her on – and getting her agreement to – the "accidental fall" story strongly suggested that he was making sure they both got their stories straight before they brought Izz to the hospital.

181 Third, the accused's remark to Nadiah about fearing the possibility of remand by the police was also telling. If Izz had sustained an accidental fall after "suddenly" fidgeting and pitching out of the accused's arm, then even assuming the accused was concerned that he might be regarded as having been "careless", there was no reason for his thoughts to turn so swiftly to the possibility of remand by the police.

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259 AB at p 115, para 16.

260 Transcript of 13 April 2022 p 45 ln 28 to p 47 ln 22.

182 Seen as a whole therefore, the accused's conduct subsequent to the Yishun MSCP incident – from his initial attempt to persuade Nadiah to have Izz buried secretly, to his efforts to ensure they both had the "accidental fall" story straight before proceeding to NUH, his procrastination in bringing Izz to the A&E, and finally his concern about the possibility of remand – strongly suggested that he knew Izz was already dead by the time they reached NUH and was reluctant to face the prospect of the police inquiring into the cause of death. This supported the Prosecution's case that Izz's death was caused by an act of the accused, and not an accidental fall.

Adverse inference under s 261 CPC

183 Finally, the Prosecution's case was bolstered by the adverse inference I drew against the accused for failing to mention the "accidental fall" story in both his cautioned statements. In his cautioned statement of 8 November 2019, in response to a charge of voluntarily causing Izz grievous hurt by "slamming his head against the floorboard" of the van, the accused expressed remorse and pleaded for leniency without saying anything about an "accidental fall". In his cautioned statement of 14 November 2019, in response to a charge of committing murder by causing Izz's death, the accused again expressed remorse and pleaded for leniency; and again, nothing was said about an "accidental fall".

184 While the accused gave various reasons for the omission, I did not find any of his reasons believable. In respect of the 8 November 2019 cautioned statement, he alleged that the officers escorting him on 8 November 2019 had scared and confused him by "shouting" questions at him. This allegation rang false. It was only raised for the first time when the accused was cross-examined about the 8 November 2019 cautioned statement; and he did not identify any of the officers involved. Moreover, although he claimed to have been overcome

with confusion, exhaustion and grief at the material time, a perusal of the cautioned statement showed that he had kept his wits about him sufficiently to mention exculpatory matters such as his remorse, his youth and his resolve to "take note that such thing won't happen again in the future".

185 As for the 14 November 2019 cautioned statement, when asked about his failure to mention the "accidental fall" story, the accused sought to brush it aside, saying that prior to 14 November 2019, he had already told the doctors and police officers at NUH about Izz accidentally falling from his arm.[261] However, this was a *non-sequitur*: it did not in any way explain the omission in his 14 November 2019 cautioned statement. In fact, since the accused claimed that he had been referring to Izz's accidental fall when he stated in this cautioned statement that he had no intention of killing Izz,[262] one would have expected him to say so expressly. He never did.

186 For the reasons set out above, I agreed with the Prosecution that an adverse inference should be drawn against the accused under s 261 of the CPC. As the Prosecution put it, the only reason why he failed to say anything in his cautioned statements about an accidental fall was "simply because this was not the truth".

Summary of findings on first element of s 300(c) charge

187 For the reasons set out above, in respect of the *actus reus* of the s 300(*c*) charge against the accused, I found that the Prosecution was able to prove that Izz's death was caused by an act of the accused – *ie*, the act of pushing Izz's

261 Transcript of 13 April 2022 p 70 ln 6 to p 71 ln 19.

262 Transcript of 13 April 2022 p 71 ln 6 to ln 8.

head twice against the floorboard of the van, thereby inflicting the head injuries that eventually led to the fatal traumatic intracranial haemorrhage.

The second element of the s 300(c) charge

188 In respect of the second element of the s 300(*c*) charge, the Prosecution bore the burden of proving that the "act resulting in bodily injury was done with the intention of causing that bodily injury to the deceased".

189 In his cautioned statement of 8 November 2019, in response to a charge of voluntarily causing Izz grievous hurt by "slamming his head against the floorboard" of the van, the accused stated that he did not have "the intention to do this to the child". In his cautioned statement of 14 November 2019, in response to a charge of committing murder by causing Izz's death, the accused stated that he had "no intention of killing Izz Fayyaz at all". In the investigative statement recorded from him by ASP Ang on 12 November 2019 at 10.45 a.m.,[263] in describing how he had pushed Izz's head towards the van floorboard twice, the accused said that he had "used mild force".

190 I make the following points about the issue of the accused's intention. First, the accused's assertion that he had no intention to *kill* Izz – even if true – did not assist his defence. In respect of the second element of the s 300(*c*) charge, the Prosecution did not need to prove that he had intended to kill Izz: as the CA noted in *Tan Chee Wee* (at [42]), it is "in fact irrelevant whether or not the accused did intend to cause death, so long as death ensues from the bodily injury or injuries intentionally caused".

263 Exhibit P-98.

191 Second, as the CA noted in *Lim Poh Lye* (at [37]), in order for the prosecution to establish the second element of the s 300(*c*) charge, it should be noted that "it is the particular and not the precise bodily injury that must be intended". In *Lim Poh Lye*, the deceased Bock was stabbed in the legs while being robbed by the two respondents Lim and Koh (as well as a third man Ng who subsequently fled the country). One of the stab wounds to Bock's legs caused his death. Lim and Koh were charged with murder under s 302, read with s 34 of the Penal Code, with the prosecution relying on s 300(*c*). The trial judge acquitted them of the murder charge and convicted them on lesser charges of robbery with hurt under s 394 PC. On appeal by the prosecution, the CA set aside the convictions on the charges of robbery with hurt and convicted both men of the original murder charges. The CA noted that the trial judge had specifically found that Lim – and Ng too – intended to stab Bock, and in particular, to cause stab wounds to his legs / thigh. The CA noted, further, that the trial judge had acquitted Lim and Koh of murder under s 300(*c*) because (*inter alia*) his "entire thesis would appear to be that as there was no intention to sever Bock's femoral vein, a case under s 300(*c*) was not made out". In holding that the trial judge had erred in coming to this conclusion, the CA held (at [37] – [40]):

> 37 … We accept that Lim (and Ng) did not know that there was a main artery running through the leg and that the bleeding, if unattended to, would, in the normal course of nature, cause death; however, under the *Virsa Singh* principle, it is never a requirement that the accused must realise the full gravity of his act. What is essential is that the particular injury which eventually caused death in the normal course of nature was inflicted by the accused intentionally and not accidentally. To the extent that the trial judge seemed to think that the loss of blood was the "injury", he had fallen into error; the loss of blood was a consequence of the stab wounds which finally caused death… (I)t is quite plain that under *Virsa Singh*, for a case under s 300(c) to be made out, it is the particular and not the precise injury that must be intended…

> 38 In finding that the severing of Bock's femoral vein was accidental, the trial judge relied on the Indian case of *Harjinder Singh v Delhi Administration* AIR 1968 SC 867… where the accused had stabbed the victim in the thigh and severed an artery. It seems to us that in *Harjinder Singh*, the Supreme Court, which acquitted the accused of murder, was not concerned with the question of whether the accused intended to sever the artery but whether he intended to cause the particular injuries that were found on the victim. The court said (at [9]):
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> > In our opinion, the circumstances justify the inference that the accused did not intend to cause an injury on this particular portion of the thigh… In these circumstances, it cannot be said that it has been proved that it was the intention of the [accused] to inflict this particular injury on this particular place.
>
> 39 In contrast, here Lim (and Ng too) intended to stab Bock's thigh to prevent him from struggling and escaping and, in the case of Ng, to teach Bock a lesson. That was not the case in *Harjinder Singh*. Furthermore, there was evidence of a fight in *Harjinder Singh*…
>
> 40 It is true that the fatal stab wound was caused to a part of the body which is not commonly known to be a vulnerable region of the body. However, that is not a consideration that affects the operation of s 300(c). As the forensic pathologist had emphasized, the thigh is a less vital region of the body only from the strictly lay perspective. The crucial question to ask is whether the wounds that were caused were in fact wounds which Lim and Ng intended to cause. Whether they knew the seriousness of the wounds is neither here nor there…

192 In *PP v Toh Sia Guan* [2020] SGHC 92 ("*Toh Sia Guan*")[264], where the accused Toh was charged with murder under s 300(*c*) PC, the fatal injury inflicted on the deceased was a through-and-through V-shaped stab wound to the inside of the right upper arm, formed by two stab wounds joined at the apex of the "V" which completely cut the right branchial artery and cut into the basilic vein. In finding that Toh possessed the requisite *mens rea* for the s 300(*c*) offence, the High Court referenced the CA's judgement in *Lim Poh Lye*; in

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264 The accused's appeal against conviction and sentence in *Toh Sia Guan* was dismissed by the CA in Criminal Appeal No 9 of 2020: [2021] SGCA 7.

particular, the CA's statement that the prosecution only had to show that the accused caused the particular but not the precise injury. Elaborating on its understanding of the CA's reasoning in *Lim Poh Lye*, the High Court noted (at [54]):

> There are two competing interests at play in determining the requisite level of particularity. On one hand, the test cannot be so narrow as to be impossible to prove. On the other hand, it cannot be too broad such that the accused is convicted of murder for an injury he did not intend. A broad-based, simple and common-sense approach has to be adopted (Virsa Singh at [21]), drawing a middle ground between the competing interests. This has to be a fact specific inquiry, depending on the circumstances of each case.

193 The High Court went on to observe that the precedents on s 300(*c*) showed that the *mens rea* would usually be satisfied if the prosecution proved intention to attack the limb where the injury was found. For example, in *Lim Poh Lye*, *mens rea* was established by finding that the accused person intended to stab the deceased's thigh. As another example, in *Chan Lie Sian v PP* [2019] 2 SLR 439 ("*Chan Lie Sian*"), where the accused had hit the deceased several times on the head and body with a metal rod and where the cause of death was bronchopneumonia following multiple fractures of the skull, the CA held that *mens rea* for murder under s 300(*c*) was established by evidence that the accused had intended to hit the deceased's head.

194 In *Toh Sia Guan*, the High Court noted that there was some controversy in the case before it over whether the requisite mental element of the offence (*ie*, the intention to inflict an injury sufficient in the ordinary course of nature to cause death) could be satisfied, in the situation where Toh and the deceased were involved in a fight, merely by the prosecution proving that Toh had intended to attack the wider part of the body on which the fatal injury was found (the deceased's *upper arm torso area*), instead of having to prove that Toh

intended to inflict the particular fatal injury on the specific part of the limb in question (in this case, *the deceased's right upper arm*). The court took the view that it was not necessary to decide the controversy on the facts of this case since Toh's intention to stab the deceased's right upper arm was established on the facts (at [58] – [64]). On appeal, the CA agreed with the High Court's conclusion that it was not necessary to decide the controversy for the reasons stated by the court; in particular, since it involved "deciding whether or not to add a further normative gloss on what is essentially a factual inquiry".

195 In the present case, I approached the issue of *mens rea* on the basis that it was – as the CA in *Toh Sia Guan* stressed – essentially a factual inquiry. At the same time, as the High Court in *Toh Sia Guan* pointed out, the precedents in this area were useful in illustrating that the courts have usually found *mens rea* in a s 300(c) case to be satisfied if the prosecution proved intention to attack the limb where the injury was found. The Prosecution in this case took the position that *mens rea* would be established by their proving that the accused had intended to cause head injuries to Izz when he pushed the latter's head against the floorboard of the van.[265] The Defence, on the other hand, submitted that the Prosecution should be required to prove that the accused had intended specifically the traumatic intracranial haemorrhage – *ie*, the acute subdural haemorrhage, the acute subarachnoid haemorrhage and the cerebral oedema - which Dr Lau's autopsy findings revealed as the eventual cause of Izz's death.[266]

196 I rejected the Defence's submission and accepted the Prosecution's, for the following reasons. The test which the Defence posited for *mens rea* under s 300(*c*) was so narrow that it would be satisfied only in the case of an accused

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265 Prosecution's End of Trial Submissions at para 24.

266 Defence's Closing Submissions at para 81.

person with medical knowledge and an understanding of the structure of the human brain. Such an approach would run contrary to the approach of the court in the cases examined above: as seen earlier, in *Lim Poh Lye*, the prosecution was only required to prove that Lim and Ng had intended to inflict stab wounds to Bock's thigh, and not that they had intended to sever his femoral artery (or even that they knew there was a main artery running through the leg and that the bleeding, left unattended, would cause death in the normal course of nature); in *Toh Sia Guan*, the court was satisfied with proof that the accused had intended to stab the deceased's right upper arm and did not require proof that he had intended to cut through the right branchial artery and into the basilic vein. In the context of the present case, in my view, the Prosecution was required to prove that in pushing Izz's head against the floorboard, the accused had acted with the intention to cause head injuries to Izz. Contrary to the Defence's submission, the Prosecution in this case was not required to prove that the accused intended specifically to cause the acute subdural haemorrhage, the acute subarachnoid haemorrhage and the cerebral oedema which eventually led to Izz's death. Following the CA's reasoning in *Lim Poh Lye* (at [37]), the traumatic intracranial haemorrhage – *ie*, the rupturing of the blood vessels on the surface of the brain — was not the "injury" for the purposes of the second element of the s 300(*c*) offence in this case, but the consequence of the blunt force trauma to the head which ultimately caused death.

197 Third, in respect of the accused's contention that he used only "mild force" to push Izz's head against the van floorboard, this too did not assist him. In cross-examination, Defence counsel also sought to emphasize that Izz's skull had not been fractured and that "(b)esides the injury to the meninges, the other parts of the brain were not affected". Insofar as these assertions were meant to highlight the absence of any intention on the accused's part to cause serious

injury to Izz, there is ample caselaw (*Virsa Singh* at 468, cited by the CA in *Tan Joo Cheng v PP* [1992] 1 SLR(R) 219 at [15]) which has established that:

> *The question is not whether the [accused] intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present.* If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the [accused] inflicted it, the only possible inference is that he intended to inflict it. *Whether he knew of its seriousness, or intended serious consequences, is neither here nor there.*
>
> [emphasis added]

198 In the present case, the accused himself described in his statements to the police how he had held the back of Izz's head with his right hand and pushed Izz's head against the floorboard of the van.[267] In the re-enactment conducted in the course of police investigations, the accused gave a clear – indeed, vivid – demonstration of how he had first grasped the back of Izz's head with his hand and pressed it against the floorboard, with the left side of Izz's head against the floorboard; and how he had subsequently followed this by pressing Izz's head against the floorboard, this time in a face-down position.[268] When asked to comment on the sequence and nature of the accused's acts as evinced in his police statements and in the photographs of the re-enactment, the forensic pathologist Dr Lau opined that in terms of explaining the mechanism of injury, this version of events was the most compelling of the various versions proffered by the accused.

199 In the circumstances, I found ample evidence from which to infer that in pushing Izz's head against the van floorboard, the accused intended to cause

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267 Exhibit P-97 and P-98.

268 Exhibit P-4(20) – (22).

him head injuries. It should be remembered that Izz was a 9 month-old baby who measured 71 cm in height and weighed 7.3 kg:[269] he would have been in no position to resist the application of any force to his head or to brace himself so as to minimize the impact to his head. In fact, considering that the accused had *held on to the back of Izz's head before pushing it down against the floorboard*, I did not see how it could be said that he intended anything other than to cause injuries to Izz's head.

200 I add that insofar as the Defence appeared to believe that the absence of skull fractures was significant, this belief was misconceived. I have already set out Dr Lau's evidence on this point.[270] In gist, the absence of skull fractures in this case was not surprising or anomalous, given the pliability of a child's skull; and the absence of skull fractures in no way precluded or militated against the rupturing of the blood vessels on the surface of the brain, as the force applied to the head would still be transmitted through the skull to the brain.

201 The Defence also appeared to think it was significant that Dr Lau had found Izz to be "apparently somewhat undernourished".[271] Unfortunately, the defence submissions were not clear as to the relevance of this finding. In any event, Dr Lau was asked in cross-examination whether Izz's undernourished state would have "contributed to the causation of the traumatic intracranial haemorrhage"; and Dr Lau's answer was an emphatic "No". As he explained, there was "no reason why the child being underweight would have contributed to the causation of the traumatic intracranial haemorrhage": Izz's undernourished or underweight state simply had "no bearing on the effect or the

269 AB at p 85, para 1.

270 See paras 65 – 74 and 163 – 166 of this Judgement.

271 Transcript of 12 April 2022 p 61 ln 3; AB at p 85, para 1.

forces that might have been brought to bear upon [him]".[272] Dr Lau's evidence on this matter was not refuted by the Defence.

202 As for the Defence's submission that the accused could not have intended to cause the fatal head injuries because they were "not the ordinary and natural consequence of the accused's act" and could not be said to be within the reasonable contemplation of the accused, this submission too was misconceived. I agreed with the Prosecution that there was no basis for the Defence to rely on *PP v AFR* [2011] 3 SLR 653 ("*AFR*"). In *AFR*, the cause of death was rupture to the deceased's inferior vena cava (a large vein that transports blood from the lower half of the body to the right atrium of the heart). The trial judge in *AFR* concluded from the forensic pathologist's evidence that such an injury was very rare; that it was not really known how this kind of injury occurred; that such injury had only been known to occur in car crashes or falls from height; and that he could not say exactly how such an injury could have occurred in a case where the accused had slapped, punched and kicked the deceased without breaking any bones. In the trial judge's view, the point he had to decide was the extent to which the accused could reasonably have known that the beating he was administering to the deceased could have caused the rupture; and since even an experienced pathologist could not be certain as to how the rupture had happened in that case, the trial judge did not think it could be said that the injury was the ordinary and natural consequence of the accused's act of beating the deceased and/or that it was well within the contemplation of any normal person. The facts of the *AFR* case were thus – as the trial judge made clear – very different from cases such as *Virsa Singh* where "the consequences of injuries by stabbing with knives or spears or drowning in water, are well within ordinary human knowledge or experience" (at [37]). (I note by the way

[272] Transcript of 12 April 2022 p 60 ln 18 to p 61 ln 6.

that the prosecution in *AFR* did not appeal against the trial judge's decision to acquit the accused of the charge of murder and to convict him of the lesser charge of culpable homicide not amounting to murder under s 304(*b*) PC – although it did appeal successfully against the sentence imposed on this lesser charge.)

203 The facts of *AFR* being as exceptional as they were, the conclusion which the trial judge came to in that case was of no assistance to the accused in this case. It was simply not possible to say that the consequence of inflicting head injuries on a 9 month-old by pushing his head against a hard surface was something that was outside of "ordinary human knowledge or experience".

The third element of the s 300(c) charge

204 In respect of the third element of the s 300(*c*) charge, the Prosecution was required to prove that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. From Dr Lau's evidence, it was clear that the blunt force trauma to Izz's head was sufficient in the ordinary course of nature to cause death.[273] In both cross-examination and closing submissions, the defence did not challenge Dr Lau's evidence on this issue; nor did the defence adduce any medical evidence of its own to refute his evidence.

The issue of motive

205 I address at this juncture the issue of motive. Insofar as the relevance of an accused's motive to the proof of an offence is concerned, the CA has

[273] Transcript of 12 April 2022 p 29 ln 28 to p 31 ln 28.

explained in *Mohammed Ali bin Johari v PP* [2008] 4 SLR(R) 1058 ("*Johari*") at [58] that –

> …(W)hile motive is not an essential element of the crime, it can "bolster an inference that an intention to commit the offence was existent.

206 In the present case, it will be remembered that in his statements to the police, the accused referred several times to Izz crying just prior to his pushing the latter's head against the floorboard. To recapitulate: in his 8 Nov 2019 statement, the accused recounted how he had found Izz crying when he returned from Sheng Siong Supermarket to the van. In the statement recorded on 13 November 2019 at 9.45 a.m., in response to a question about what was "in [his] mind when [he] pushed Izz's head towards the floorboard", the accused had initially stated that he felt "*rimas*" (a word he understood as meaning "uneasy") over Izz's crying before cancelling the words "over Izz's crying". In the 14 November 2019 cautioned statement, in response to a charge of murder which alleged that he had caused Izz's death, the accused initially said that he "did it in the moment of anger" before requesting the deletion of the word "anger" and its replacement with the word "frustration". It will also be remembered that when confronted with the 14 November 2019 cautioned statement during cross-examination, the accused claimed that the recorder ASP Desmond Ng had supplied the word "anger" and he himself had spoken "wrongly" when he used the word "frustration".[274] He gave the same explanation – *ie*, that he had answered "wrongly"[275] – when confronted with his original statement on 13 November 2019 about having felt uneasy "over Izz's crying".

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274 Transcript of 13 April 2022 p 71 ln 1 to p 73 ln 6.

275 Transcript of 13 April 2022 p 74 ln 4 to ln 28.

207 Having considered the evidence adduced, I was satisfied that it was the accused himself who told the police that he had felt uneasy over Izz's crying and that he had pushed Izz's head against the floorboard in a moment of frustration. In respect of the 14 November 2019 cautioned statement, ASP Desmond Ng's testimony was corroborated by that of the Malay interpreter Ms Maria. Having regard to their evidence, which I found cogent and consistent, I was satisfied that the initial use of the word "anger" and its subsequent replacement with the word "frustration" both emanated from the accused. I rejected the accused's story about having answered "wrongly" when he used the word "frustration". His story simply did not make sense: *inter alia*, he could not offer any reason as to why he would have "wrongly" blurted out this word as a replacement for the word "anger".

208 The accused's story about having "answered wrongly" in using the phrase "over Izz's crying" in his 13 November 2019 statement was just as nonsensical. Again, there was no explanation as to why the inclusion of this phrase constituted a "wrong" answer on his part – whether, for example, it was because there was something factually erroneous or inaccurate about this phrase.

209 Having found that it was the accused himself who told the police he had felt uneasy over Izz's crying and that he had pushed Izz's head against the floorboard in a moment of frustration, I found that these statements supported the Prosecution's case about the motive behind the accused's actions: namely, that the accused had been frustrated – or had at least been made uneasy – by Izz's repeated crying; and that he had reacted to this frustration or unease by pushing Izz's head against the floorboard. I also agreed with the Prosecution that it was concern about the potentially "incriminating" effect of the references to Izz's crying that prompted the accused to request the deletion of the phrase

"over Izz's crying" from his 13 November 2019 statement. It was clear to me that his excuse about having given "wrong" answers was simply a ploy on his part to disavow anything in his statements which – in retrospect – appeared incriminating.

210 In this connection, tellingly, the remark about having felt uneasy *over Izz's crying* was repeated by the accused during his first interview with Dr Cheow on 4 December 2019. In his IMH report, Dr Cheow stated that the accused had recounted how he felt "uncomfortable" due to Izz's crying – but had then objected to Dr Cheow describing him as being "disturbed" by the crying "as he felt that it would sound incriminating if he admitted to being "disturbed by the crying"".[276] In cross-examination, Defence counsel contended that the accused had not actually used the word "incriminating". Dr Cheow's evidence was that even if the accused might not have used that particular word, he was "*quite sure that this [was] what he [the accused] meant*". This evidence was not refuted by the Defence.[277] Dr Cheow's evidence therefore supported the Prosecution's case about the accused's motive for pushing Izz's head against the floorboard.

211 I did note that in subsequent interviews with Dr Cheow on 6 December 2019 and 10 December 2019,[278] the accused recanted the version of events given at the first interview. In its place, the accused offered a hybrid version in which he "accidentally ended up pushing [Izz] forward" while attempting to soothe Izz after the latter "[fell] down and hit [his] head against the plywood floor". This frankly unbelievable hybrid version was abandoned by the accused himself,

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276 AB at p 89, para 16.

277 Transcript of 8 April 2022 p 86 ln 2 to p 87 ln 14.

278 AB at p 90, para 24.

who did not repeat it in his Case for the Defence nor at trial. Notably, however, even in this hybrid version, the accused acknowledged that it was Izz's crying that led to his "patting [Izz's] neck" in an attempt to soothe the boy. Clearly, Izz's crying – and the persistence of that crying – were the factors that triggered a physical response from the accused on 7 November 2019.

212 Following the CA's reasoning in *Johari*, the evidence as to the accused's motive was relevant to proof of the second element of the s 300(*c*) charge, in that it bolstered the inference that the blunt force trauma to Izz's head was intentionally inflicted by the accused – as opposed to being the result of some accidental or inadvertent movement.

213 In the interests of completeness, I should state that although there was some suggestion that the accused was angered by Izz spilling a drink on him during dinner at Long John Silver, I did not place any weight on this suggestion. Even if it were true that Izz had spilt a drink on the accused, this would have happened hours before the incident at the Yishun MSCP: there was no evidence to suggest that it had any bearing on the accused's actions at the Yishun MSCP.

Character evidence from the accused's sister

214 Finally, in respect of the evidence given by the accused's sister Atikah regarding the accused's love for children and his capacity for hard work, I did not find that the evidence assisted his defence. Having observed the accused closely in the witness stand and having assessed his evidence against the other evidence available in this case, I found him to be a glib and disingenuous witness. Not only was it clear that he had made up the story about an "accidental fall" in order to evade accountability for his actions, when it became apparent during the trial that his lies were unravelling, he sought to smear Nadiah and various police witnesses by levelling false accusations against them.

215 In *Chan Mei Yoong Letticia v PP* [2002] 1 SLR(R) 897 ("*Chan Mei Yoong Letticia*"), the appellant - who was tried for an offence of employing an immigration offender under s 57(1)(ii) of the Immigration Act (Cap 133, 1997 Ed) – produced at trial "an impressive testimonial of good character from a very distinguished and highly respected senior civil servant who had known her for 40 years, stating that it was totally out of character for the appellant to have done anything illegal" (at [34]). In dismissing the appellant's appeal against her conviction, the High Court held that the trial judge had not erred in attaching little or no weight to the testimonial as far as the appellant's credibility was concerned. The High Court acknowledged that as a matter of general principle, evidence of good character is "generally relevant to the credibility of an appellant as a witness". In *Chan Mei Yoong Letticia*, however, while there was no doubt that the appellant was "generally of good character", she had been "less than truthful and forthright with respect to a number of matters"; and as such, the evidence of good character "was rendered of little assistance to the appellant in this case".

216 In the present case, I found it difficult to accept that the somewhat sketchy and one-sided testimony from Atikah sufficed to demonstrate general good character on the accused's part. However, even if I were to accept that the accused was generally of good character, having regard to the clear evidence of his many lies and obfuscations in this case, such character evidence was of little (if any) assistance in propping up his credibility.

Conclusion on the s 300(c) charge against the accused

217 At the conclusion of the trial, as I found that the Prosecution had successfully proved all the elements of the s 300(*c*) charge of murder, I convicted the accused of the charge.

The sentence

218 Pursuant to s 302(2) of the PC, whoever commits murder within the meaning of s 300(*c*) shall be punished with death or imprisonment for life, and shall – if he is not punished with death – also be liable to caning. In this case, upon the accused being convicted, the Prosecution informed me that it would not be seeking the death penalty. Having considered the present facts in the light of the relevant caselaw, I did not find that the circumstances of this case warranted the death penalty.

219 The test for when the death penalty is appropriate in s 300(*c*) PC cases has been articulated in cases such as *PP v Kho Jabing* [2015] 2 SLR 112 ("*Kho Jabing*"). In that case, the court held (at [44] – [46]) that the applicable principle in deciding whether the death penalty should be meted out is "whether the actions of the offender would outrage the feelings of the community". This is because capital punishment is "an expression of society's indignation towards particularly offensive conduct": the fact that the death penalty continues to be part of our sentencing regime is "an expression of society's belief that certain actions are so grievous an affront to humanity and so abhorrent that the death penalty may, in the face of such circumstances, be the appropriate, if not the only, adequate sentence". In determining whether the actions of the offender would outrage the feelings of the community, the death penalty is the appropriate sentence where the offender has acted in a manner that shows viciousness or a disregard for human life. It is therefore the manner in which the offender has acted which takes centre stage, though other facts such as the offender's age and intelligence continue to be relevant: *Kho Jabing* at [48].

220 The application of this principle is usefully illustrated in a number of cases. In *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249, the CA

overturned the trial judge's decision to sentence the accused, Chia, to life imprisonment. The CA found (at [139]) that there was a high degree of planning and premeditation. Further, the attack was vicious: the accused had suffered extensive fractures in his skull; almost every bone from the bottom of his eye socket to his lower jaw was fractured: *Chia Kee Chen* at [140]. Finally, Chia had (at [141]) displayed a blatant disregard for the deceased's life: he had stated that he desired for the deceased to suffer as much as possible before dying and the only regret he ever expressed was that the deceased had died before he could inflict more suffering.

221 In contrast, the CA in *Chan Lie Sian* ruled that the prosecution had not established that the appellant was acting at the material time with a blatant disregard for human life. For one, the appellant was (at [88]) unaware at the time of the attack, or in its immediate aftermath, of the fatal nature of the victim's injuries. There was also no evidence that the appellant had intended for the victim to suffer.

222 This was also the case in *Public Prosecutor v Boh Soon Ho [*2020] SGHC 58 ("*Boh Soon Ho*"). In that case, the accused had over the course of four to five years spent approximately half his income on the victim, and tried to woo her. But the victim had no romantic interest of any sort in him. The straw that broke the proverbial camel's back came when the victim revealed that she had been intimate with her former boyfriend. In a fit of rage, the accused strangled the victim to death (*Boh Soon Ho* at [17] – [19]). The court accepted (at [109]) that "the present case was not one that so outraged the feelings of the community as to call for the death sentence". The accused had acted "without premeditation and the manner in which he killed the deceased could not be said to have crossed the threshold of acting with viciousness or a blatant disregard

for human life". The appeal against his conviction and sentence was dismissed by the CA.

223 In *Toh Sia Guan*, the accused had gotten into a fight with the victim. After this altercation, the accused went and bought a pair of slippers and a knife. Shortly thereafter, he returned to the area where he got into another fight with the victim. Armed with the knife, the accused stabbed the victim a few times. The court found that the death penalty was not warranted. For one, the prosecution bore the burden of proving that the actions of the accused outraged the feelings of the community; and this was not done as the prosecution had made no submissions on this issue. In any case, the following factors weighed against the imposition of the death penalty. First, the accused did not know that the injury he caused was fatal, either during the time of the attack, or thereafter: this supported the conclusion that there was no blatant disregard for human life (*Toh Sia Guan* at [119]). It was also not proven that the accused had any intention to want the victim to suffer as much as possible, or that he had inflicted completely unnecessary additional blows even after the accused had stopped reacting. The case also lacked a high degree of premeditation and planning. Finally, while the level of viciousness in *Toh Sia Guan* was reprehensible, it was not of such a degree so as to outrage the feelings of the community (*Toh Sia Guan* at [122]). No caning was imposed in light of the accused's age.

224 The accused's appeal in against conviction and sentence in *Toh Sia Guan* was dismissed by the CA in *Toh Sia Guan v Public Prosecutor* [2021] SGCA 7. Rejecting the accused's argument that the sentence of life imprisonment was too harsh, the CA noted that under s 302(2) of the Penal Code, there were only two available sentencing options for murder under s 300(*c*): the death penalty or life imprisonment. The CA thus held that the trial judge could not have imposed a more lenient sentence.

225 In the present case, the Prosecution did not seek to prove that the actions of the accused had outraged the feelings of the community. On the facts of this case, I did not think that the death penalty was warranted. There was no evidence of a "blatant disregard for human life" on the accused's part; nor was there evidence of premeditation and planning, and/or of a desire on the accused's part for Izz to suffer. As I earlier stated when considering the issue of motive, the accused's actions appeared to have been carried out in a fit of frustration or anger. While the act of pushing a 9 month-old's head against the floor of a van was certainly reprehensible, I did not think the level of viciousness in this case could be said to have risen to such a degree that the feelings of the community would be outraged.

226 For these reasons, I found that the death penalty was not called for in the circumstances.

227 As to caning, s 302(2) of the PC provides that an offender who is sentenced to a term of life imprisonment shall also be liable to caning. The Prosecution submitted that the accused should, in addition to a term of life imprisonment, be sentenced to 15 to 18 strokes of the cane. The Defence, on the other hand, argued that 5 to 6 strokes of the cane would be appropriate.

228 While there have been cases under s 302(2) PC where the courts have imposed the maximum number of strokes of the cane alongside a sentence of life imprisonment (*eg*, *Wang Wanfeng*; also *Micheal Anak Garing v Public Prosecutor and anor appeal* [2017] 1 SLR 748), there is nothing in s 302(2) which mandates that the maximum number of the strokes must be meted out in the event that a term of life imprisonment is imposed.

229 In exercising my discretion under s 302(2), I was guided by the following principles. Our courts have consistently adopted a tough stance towards offenders who cause the deaths of defenceless young victims by violence (per the Court of Appeal in *PP v AFR* [2011] 3 SLR 833 ("*AFR (CA)*") at [14]). An offender's culpability will generally be viewed as being enhanced when the victim is vulnerable; and as the CA noted in *PP v BDB* [2018] 1 SLR 127 ("*BDB*") (at [37]), among vulnerable victims, young victims are notable for several reasons. *Inter alia*, there will, more often than not, be a gross physical disparity at play; and as a result, the victims will often be defenceless and unable to protect themselves.

230 This was certainly the case here. As I have earlier noted, Izz, was a 9-month-old baby measuring only 71 cm in height and weighing only 7.3kg at the time of death: Dr Lau's evidence was that these measurements corresponded approximately to the 50th and the 3rd percentiles for the expected height and weight, respectively, of a 9 month-old male child. The accused, in contrast, is a full-grown male adult. As the CA has emphasized in cases such as *AFR (CA)* and *BDB*, retribution is a key sentencing consideration in cases where violence has been inflicted on a child (*AFR (CA)* at [32], *BDB* at [76]). In addition, it is important to send the clear message that no caregiver – whether a parent or any individual to whom the welfare of the child has been entrusted – has any licence to inflict violence with impunity on any young children in his or her charge. To borrow the words of the CA in its judgement in *AFR (CA)* (at [12]), any caregiver who does so will not be allowed (for mitigation purposes) to exclaim with regret that he did not mean to inflict violence on the victim in question, whom he professes to love.

231 In *BDB*, the court – in considering cases involving abuse of young children where the accused had been charged under s 325 of the Penal Code –

held that where death is caused in such cases, a sentence of 12 or more strokes of the cane may be warranted (at [76]). I did not think it was correct for Defence counsel to say that the CA's remarks on caning in *BDB* were entirely irrelevant to the present cases simply because *BDB* concerned a charge under s 325 of the Penal Code. The CA in *BDB* held that 12 or more strokes of the cane was warranted in *s 325 PC cases where death is caused*. It would be wrong in principle and manifestly inadequate for an accused convicted of causing the death of a child under the far more serious s 300(*c*) charge to be sentenced only to "5 to 6 strokes" of the cane (as submitted for by the Defence).

232 The Prosecution cited two cases where the accused persons were convicted of murder charges under s 300(*c*) and one case where the accused was convicted of a s 300(*b*) murder charge for which the punishment is the same as that for s 300(*c*) (*ie*, under s 302(2)). These three cases were unreported decisions. Unreported decisions should be approached with some caution because, *inter alia*, the absence of written grounds of decision may make it difficult to arrive at a proper appraisal of these facts and circumstances (*Public Prosecutor v Siow Kai Yuan Terence* [2020] 4 SLR 1412 at [86]; *Public Prosecutor v Lim Cheng Ji Alvin* [2017] 5 SLR 671 at [13]; *GCM v Public Prosecutor and anor appeal* [2021] 4 SLR 1086 at [75]). Even approaching these cases with caution, however, I was unable to agree with the Defence that these three cases were "much more serious" than the present case. For one, while the mode of attack in each of these three cases was different (with two of them featuring the use of a weapon), the victims in these three cases were all adults, and not a defenceless 9-month-old child.

233 In the present case, I agreed with the Prosecution that Izz's extreme youth and total inability to defend himself rendered him an especially vulnerable victim and constituted an aggravating factor which must be taken into account

in sentencing. Other aggravating factors included the fact that Izz had been entrusted by his mother Nadiah to the accused's care on the night in question. In this connection, I must point out that the fact that the accused had volunteered or agreed to take care of Izz on that fateful night could not be a mitigating factor, since what he then did with the trust placed in him was – tragically – to violate that trust by inflicting physical violence on Izz and causing his death.

234 As the Prosecution also pointed out, the accused's conduct following the violence inflicted on Izz showed a disturbing lack of remorse: he had, among other things, failed to seek immediate medical attention for Izz; he initially tried to get Nadiah to agree to paying someone to bury Izz and reporting him missing only a year later; when he could not persuade Nadiah to agree to this despicable suggestion, he sought to make sure she would tell the same story of an accidental fall; he repeatedly delayed bringing Izz and Nadiah to the A&E department, even when they reached the hospital.

235 As stated earlier, I did note that this was not a case of premeditated attack or prolonged abuse. It must be stressed, though, that the lack of premeditation and the absence of a prolonged period of abuse amounted only to the absence of aggravating circumstances, and not the existence of a mitigating factor *per se*: see *eg*, *BDB* at [63].

236 For completeness, I also noted that although the accused had an antecedent from 2016 (where he was fined $1000 for riotous, disorderly or indecent behaviour under s 20 of the Miscellaneous Offences Act (Cap 184)[279]), it was not an antecedent that had any relevance to the present offence.

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279 Transcript of 11 August 2022 p 1 ln 15 – 26.

Conclusion on sentence

237 For the reasons stated above, I concluded that a sentence of 15 strokes of the cane would be appropriate in this case. I therefore sentenced the accused to life imprisonment and 15 strokes of the cane. The sentence of life imprisonment was backdated to his date of arrest, 8 November 2019.

Mavis Chionh Sze Chyi
Judge of the High Court

Han Ming Kuang and Lim Shin Hui (Attorney-General's Chambers) for the Prosecution;
Kanagavijayan Nadarajan (Kana & Co), Ramachandran Shiever Subramanium (Grays LLC) and Wong Hong Weng Stephen (Matthew Chiong Partnership) for the Defence.