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

[2021] SGHC 68

Criminal Case No 29 of 2020

Between

Public Prosecutor

And

Ahmed Salim

GROUNDS OF DECISION

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

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Public Prosecutor
v
Ahmed Salim

[2021] SGHC 68

General Division of the High Court — Criminal Case No 29 of 2020
Mavis Chionh Sze Chyi J
15, 16, 18, 22–25, 28 September, 14 December 2020

22 March 2021

Mavis Chionh Sze Chyi J:

Introduction

1 The accused, Ahmed Salim, a 32-year-old male Bangladeshi national, was tried before me for the murder of one Nurhidayati Bt Wartono Surata ("Yati"). At the end of the trial, I found that the Prosecution had proven its case against the accused beyond a reasonable doubt. I convicted the accused on the charge of murder and imposed the mandatory death sentence on him. The accused has appealed against his conviction and I now set out below the grounds of my decision.

2 The charge on which the accused was tried read as follows:

> That you, ... on 30 December 2018, sometime between 5.15 p.m. and 8.15 p.m., in Room 307 of the Golden Dragon Hotel located at No. 61 Westerhout Road, Singapore 397662, did commit murder of one Nurhidayati Bt Wartono Surata, Female / 34 years old, with the intention of causing death, and

> you have thereby committed an offence under s 300(*a*) punishable under s 302(1) of the Penal Code (Cap [224], 2008 Rev Ed).

Facts

3 It was not disputed that the accused killed Yati on the evening of 30 December 2018 at the Golden Dragon Hotel located at No. 61 Westerhout Road, Singapore 397662 ("the Hotel"). The facts of the relationship between the accused and Yati were also not contentious for the most part. I will first set out the key elements of the factual narrative, which are primarily based on the Agreed Statement of Facts filed jointly by the parties and, where necessary, supplemented by the evidence adduced at trial.

Background

4 At the material time, the accused was employed as a painter by Ferh International Pte Ltd ("Ferh") and stayed at a dormitory at 500 Old Choa Chu Kang Road, Sungei Tengah Lodge, Singapore 698924 ("the Dormitory"). Yati, a female Indonesian national, was working as a domestic helper at the material time.[1]

5 The relationship between the accused and Yati began sometime in May 2012. They met on alternate Sundays and had sex about once a month.[2] The accused's evidence was that he would give Yati about $50–$100 every month; and in addition, he bought her various things and even helped to pay off her debts and loans.[3] In his words, "[t]he clothes she was wearing, all the things she

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1 Agreed Statement of Facts ("ASOF"), paras 1–2.

2 ASOF, para 3.

3 Agreed Bundle of Documents ("AB") vol 2, p 966, para 9; p 979, para 15; pp 990–991, para 62.

had in her room, everything was given by me, bought with my money … whatever a person gives to his wife, I did the same".[4]

6 The relationship between the accused and Yati developed and, in November 2017, they agreed to get married in December 2018.[5] Although they had not yet gotten married, the accused testified that he regarded his relationship with Yati as that of "husband and wife" and that they had promised to be faithful to each other.[6]

7 Sometime in May or June 2018, Yati started dating one Shamim Shamizur Rahman ("Shamim"), a Bangladeshi plumber working in Singapore. They would meet about once a month on Sundays. As the accused would call Yati every day,[7] he began to suspect that she was seeing someone else when she became uncontactable one Sunday. He confronted her and she admitted that she was in a relationship with Shamim. Following the confrontation, the accused asked his mother and his friend to help him look for a wife in Bangladesh. His mother found him a potential wife and arranged for his marriage in Bangladesh in February 2019.[8]

8 The accused and Yati reconciled sometime in July or August 2018 and resumed their meetings on alternate Sundays. They continued dating each other even after the accused informed Yati about his upcoming arranged marriage. Both of them continued to argue over Yati's relationship with Shamim. On one

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4 Transcript of 22 September 2020, p 18 lines 27–29.

5 ASOF, para 3.

6 Transcript of 22 September 2020, p 17 lines 6–15.

7 Transcript of 22 September 2020, p 44 line 10.

8 ASOF, para 4.

occasion, when they argued over Yati's relationship with Shamim, the accused pressed a towel over Yati's mouth. He released the towel when she started to struggle. Frightened, Yati apologised to the accused.[9]

9 Sometime in late October 2018 and early November 2018, Yati got to know one Hanifa Mohammad Abu ("Hanifa") on Facebook. Hanifa was a Bangladeshi working in Singapore as a general fitter. About a week later, he and Yati started meeting each other every Sunday morning; and they had sex within three weeks of getting to know each other. Yati admitted to Hanifa that she was in a relationship with the accused and told him that the accused had an arranged marriage in Bangladesh. She also sent Hanifa a screenshot of the accused's WhatsApp profile. Yati promised Hanifa that she would end her relationship with the accused, and she and Hanifa continued dating.[10]

10 On 9 December 2018, the accused once again suspected Yati of seeing someone else when he could not contact her. That night, Yati called the accused. She revealed to him that she had a new boyfriend (*ie*, Hanifa) and told him to return to Bangladesh for his arranged marriage. The accused asked to meet Yati on 23 December 2018 and she agreed.[11]

11 On 23 December 2018, the accused and Yati checked into a room at the Hotel. Yati told the accused that she did not meet Hanifa in person and that she would continue to meet the accused. However, this was untrue as she had met Hanifa in the morning prior to meeting the accused on 23 December 2018.[12] She

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9 ASOF, para 5; 2AB982, para 24.

10 ASOF, para 6.

11 ASOF, para 7; 2AB980, para 19.

12 2AB916–917, para 5.

also repaid a loan of $500 to the accused. After they parted ways, Yati called the accused that same evening to break up with him. He persuaded her to meet him at the Hotel for a final time on 30 December 2018.[13]

The events on 30 December 2018

12 On the morning of 30 December 2018, the accused withdrew nearly all of his savings from a teller machine near the Dormitory, leaving only $37 in his bank account.[14] He had a rope with him in the pocket of the trousers that he wore to meet Yati,[15] but as will be seen, the Prosecution and the Defence provided sharply differing reasons for this.

13 The accused met Yati at the block where she stayed with her employer at around 4pm. They took a taxi to Paya Lebar for Yati to collect facial cream from her friend. They then took a train from the Paya Lebar Mass Rapid Transit ("MRT") station to Aljunied MRT station and made their way to the Hotel.[16]

14 After paying $40 for a three-hour stay, the accused and Yati checked into room 307 of the Hotel ("the Room") at around 5.15pm. They had sex for the first time that night and remained naked thereafter. The accused attempted to convince Yati to break up with Hanifa but to no avail. She also refused to let the accused check her mobile phone.[17] The accused wrapped a bath towel around her neck for the first time that night and threatened to kill her if she

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13 ASOF, paras 8–9.

14 ASOF, para 10; 3AB1028–1029.

15 Transcript of 22 September 2020, p 14 lines 11–12.

16 ASOF, para 11.

17 ASOF, para 12; transcript of 22 September 2020, p 10 line 21 to p 12 line 6.

continued dating Hanifa and if she did not allow him to check her phone.[18] However, he then released the towel and they had sex again.

15 The accused provided starkly different accounts in his statements and in his oral testimony as to what happened thereafter. According to his statements and his interviews with the psychiatrist from the Institute of Mental Health ("IMH") Dr Christopher Cheok ("Dr Cheok"), after he and Yati had sex for the second time, Yati told him that it would be the last time that they would meet. He then wrapped the towel around her neck for the second time that night. Yati was not cowed by the accused's threat to kill her and told him: "If you want to kill me, kill me. With you, this is my last meet. I don't want to see you again and I will not leave [Hanifa]."[19] Upon hearing this, the accused tightened the towel around her neck.

16 At trial, however, the accused said that after they had had sex for the second time that night, Yati told him: "You do sex with me … means you do sex with your mother." He allegedly responded by wrapping a towel around his hand and pressing the towel against Yati's mouth. He then removed his hand and told Yati: "Because of … a man, you are saying all these bad things about me and my mother. Then let me call [Hanifa]." He tried to get Yati's phone in order to check the contents thereof and to call Hanifa.[20]

17 The accused also testified at trial that it was at this juncture that Yati told him: "[Hanifa] is better than you. He is better than you in the hotel … he is better in bed … he is better financially. If you don't believe … next week I will

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18 2AB993, para 73.

19 2AB983, para 27; 3AB152–154; transcript of 22 September 2020, p 11 line 28 to p 12 line 7.

20 Transcript of 23 September 2020, p 22 line 11 to p 25 line 9.

go with him, will make a video and show you"[21] ("the Humiliating Words"). According to the accused's testimony at trial, he was provoked by the Humiliating Words and lost his self-control; and this was why he proceeded to strangle Yati.

18 The Prosecution disputed that Yati had uttered these Humiliating Words to the accused on 30 December 2018 and pointed out, *inter alia*, that these words had never once been mentioned in the accused's statements.

19 In any event, the accused did not (for the most part) dispute the account he had given in his investigative statements of the acts he had carried out in killing Yati. He wrapped the towel around Yati's neck and tightened it. He then stepped on one end of the towel and pulled at the other end.[22] Yati became motionless soon after and the accused removed the towel from her neck. The accused then retrieved the rope which had been in his trouser pocket and tied it around Yati's neck.[23] He tightened the rope and tied "about two or three knots" with it.[24]

20 Thereafter, the accused also pressed a towel over Yati's mouth for about ten to 15 seconds with considerable force[25] and observed that her face had turned blackish.[26] Finally, he twisted her head from left to right with "a force of about 6–7, out of the spectrum [to] 10 where 1 [was] the least force used and 10 [was]

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21 3AB23.

22 Transcript of 24 September 2020, p 51 lines 28–30.

23 Transcript of 22 September 2020, p 13 line 8 to p 14 line 14.

24 2AB983, para 29.

25 2AB999, para 90.

26 2AB999, para 90.

the most force used".[27] It should be noted that in his investigative statements, the accused explained that he had strangled Yati with the rope and twisted her head from left to right in order to ensure that she would not survive.[28] In his oral testimony at trial, however, the accused's account was that he did so purely to stop a sound that he heard coming out from Yati's mouth.[29]

21 The accused proceeded to take a shower as he was sweating.[30] He also put Yati's clothes back on her body as he did not want anyone else to see her naked. He then placed her on her left side, covered her with a blanket and left the Room.[31]

22 At around 8.15pm, the accused went to the Hotel reception to extend the room booking. He haggled with the hotel staff over the price of extending the room booking and eventually paid $30 for a two-hour long extension.[32] Thereafter, he left the Hotel and bought a can of "Red Bull" at a provision shop nearby.[33]

23 The accused then returned to the Room. He observed that Yati was in the same position that he had left her. He took all her cash amounting to around $30, her mobile phone and her ez-link card, switched off the air-conditioner and lights in the Room, and left the Hotel.[34]

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27 2AB999, para 91.

28 2AB983, para 28; 2AB999, para 91.

29 Transcript of 24 September 2020, p 53 line 3 to p 54 line 15.

30 2AB995, para 79.

31 2AB995–996, para 81.

32 Transcript of 15 September 2020, p 121 line 27 to p 123 line 11.

33 ASOF, para 14.

34 ASOF, para 15.

24 That night, the accused also spoke to Hanifa on the phone several times.[35] Hanifa testified that he had tried to call both Yati's and the accused's phone numbers that night, and that he knew that the accused was holding onto Yati's phone.[36] In these exchanges, the accused persistently interrogated Hanifa about his relationship with Yati. Hanifa testified that the accused sounded "angry" and that he "talked in a loud voice".[37]

The arrest of the accused

25 The accused called his colleague and roommate, Khalik Md Abdul ("Khalik"), twice at about 8pm and 8.45pm, to ask for Khalik's whereabouts. Khalik informed the accused that he was at a provision shop within the Dormitory.[38] Shortly thereafter, the accused returned to the Dormitory and bought some food at the canteen. He then handed $1,000 in cash to Khalik, who agreed to help the accused remit the money to the accused's father in Bangladesh.[39] The accused told Khalik that he had killed someone.[40]

26 The accused then told his roommates that he would be returning to Bangladesh and offered them the food that he had earlier bought at the canteen. He also offered food to others in the neighbouring room. After talking to his colleagues, the accused took a shower and left the Dormitory. He loitered around Geylang before checking into Kim Tian Hotel (Han) located at 29 Lor 4

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35 ASOF, para 16.

36 Transcript of 15 September 2020, p 114 line 9 to p 115 line 15.

37 Transcript of 15 September 2020, p 115 lines 16–21.

38 2AB930, para 3.

39 2AB930, para 4.

40 ASOF, para 17.

Geylang, Singapore 399281, at around 2am the next morning. He checked out of the hotel at around 5am and loitered in a park at Boon Lay.[41]

27 At around 9am, the accused sent a WhatsApp message to one Zoe Lau ("Zoe"), who was in charge of human resource matters at Ferh. He told Zoe that he needed to return to Bangladesh that very day as he had some problems back at home. At Zoe's direction, the accused called Ferh's owner, Fadhillah bin Sahamat ("Fadhillah"), and requested to return to Bangladesh that day. Fadhillah told the accused to go to the Ferh office to discuss the matter.[42] Unbeknownst to the accused, the police had already been in touch with Fadhillah by then. When the accused arrived at the Ferh office at around 10.45am, he was arrested by the police officers who were waiting in the office.[43]

The discovery of Yati's body and the autopsy

28 At about 10.15pm on 30 December 2018, Mr Lee Peng Yuan ("Mr Lee"), the Hotel receptionist, called the Room as the two-hour extension had expired. As nobody answered the call, Mr Lee went to the Room. He knocked on the door but received no response. He then unlocked the door and entered the Room with a duplicate key.[44]

29 Mr Lee saw Yati lying on the bed. He tried waking her up but she remained unresponsive. He then left the Room and called the police at around 10.45pm.

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41 ASOF, para 18.

42 ASOF, para 19.

43 ASOF, para 20.

44 ASOF, para 21.

30 Paramedics from Paya Lebar Fire Station were dispatched to the Hotel. At about 10.53pm, the paramedics arrived at the Hotel and went to the Room. One of the paramedics, Paramedic Sergeant Nabilah binte Sadali ("W/Sgt Nabilah"), saw Yati lying on her side on the bed, covered in a blanket up to her shoulders. When the paramedics removed the blanket, they observed Yati to be unresponsive. There was a towel stained with blood next to her. W/Sgt Nabilah checked Yati's body and observed that there was blood coming out of her nose and left ear, and that her face was swollen. She also felt the rope tied around Yati's neck.[45] Yati was pronounced dead at 11.02pm.

31 On 31 December 2018, Dr Lee Chin Thye ("Dr Lee"), a Consultant Forensic Pathologist with the Health Sciences Authority, conducted an autopsy on Yati. When conducting an external examination of Yati's body, he noted that there was a ligature, comprising a grey fabric rope measuring 0.5cm in thickness and approximately 100cm in length, around Yati's neck. The rope had been wound a total of four times around her neck and a knot had been tied with the rope at the left side of the front of her neck.[46] Dr Lee further noted that the only external injury to the body was a complex ligature mark around Yati's neck,[47] and that the ligature mark was consistent with the rope that had been found around her neck.[48]

32 Dr Lee found the cause of Yati's death to be strangulation and cervical spine injury.[49] He also testified that it was possible that Yati had been strangled

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45 ASOF, paras 23–25.

46 1AB23–24.

47 1AB24–25.

48 Transcript of 16 September 2020, p 86 lines 11–13.

49 1AB27.

with a towel before being strangled with the rope, given that strangulation with a towel would not leave much of a mark on the neck.[50] However, whether the cause of Yati's death was strangulation with a towel or strangulation with a rope, it was undisputed that the accused had caused Yati's death.

The accused's statements

33 A total of five police statements were recorded from the accused and comprised:

(a) a cautioned statement recorded on 31 December 2018 by Assistant Superintendent of Police Lee Tien Huat Chris, pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"); and

(b) four long statements recorded by Assistant Superintendent of Police Teo Ko Sing ("ASP Teo") on 3 January 2019, 4 January 2019, 7 January 2019 and 8 January 2019 respectively, pursuant to s 22 of the CPC.

34 While the Defence did not contest the voluntariness of the accused's statements, the accuracy of these statements became a bone of contention at trial.

35 The gist of the accused's statements was that upon learning of Yati's relationship with Hanifa on 9 December 2018, the accused had decided to kill her, and he had come up with a plan whereby he would kill her if she refused to leave Hanifa and to stay with him (the accused) until his departure for Bangladesh. In this regard, the accused's statements contained numerous

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50 Transcript of 16 September 2020, p 86 lines 3–20.

references to his having "decided" to kill Yati even before 30 December 2018, and certainly on 30 December 2018 when she refused to break up with Hanifa.[51] The accused further elaborated in his statements that he had "chose[n]" to kill Yati with a rope because it was illegal to carry sharp weapons in public whereas it would be easy to keep the rope in his pocket;[52] he had deliberately brought the rope along with him to the Hotel on 30 December 2018 for the purpose of killing her.[53] The accused also stated in his cautioned statement that he "admitted to the charge" because "[he] did it out of anger, because [he had] proof that [Yati had] another relationship with another guy".[54]

The Prosecution's case

36 The Prosecution's case was that the accused had planned to kill Yati prior to 30 December 2018 and on as early as 9 December 2018, when he found out that Yati was dating Hanifa.[55] He came up with an internal "algorithm" or "decision tree": in gist, he decided that he would kill her if she refused to break up with Hanifa but that he would not do so if she agreed to end her relationship with Hanifa and to continue dating him until he returned to Bangladesh for his marriage.[56] He had arranged to meet Yati at the Hotel on 23 December 2018 in order to execute his plan to kill her, but did not do so on that day because she convinced him that she would continue seeing him and that she had not met Hanifa in person.[57] When Yati subsequently called the accused to break up with

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51 See, *eg*, 2AB981, para 20; 2AB983, para 27; 2AB993, para 71; 2AB995, para 80.

52 2AB981, para 21.

53 2AB992, para 67; 2AB993, para 72.

54 2AB945.

55 Prosecution's closing submissions ("PCS"), para 25.

56 PCS, paras 25, 26, 31, 78(c) and 102.

57 PCS, para 27(b).

him after they had parted ways on 23 December 2018, the accused was infuriated and once again resolved to kill her. In persuading her to meet him for a final time at the Hotel on 30 December 2018, the accused had intended to kill her if she refused to end her relationship with Hanifa.[58] The accused had intentionally brought the rope along with him when he met Yati at the Hotel on 23 December 2018 and on 30 December 2018 in order to execute his plan to kill her if she did not agree to date him exclusively.[59]

37 In this regard, the Prosecution argued that the accused's statements were accurate recorded – including those passages in which he had spoken of having "decided" to kill Yati prior to 30 December 2018 and on as early as 9 December 2018.[60] The Prosecution also relied on the evidence of Dr Cheok, a Senior Consultant with the Department of Forensic Psychiatry of the IMH, in order to bolster its case of a premeditated killing.[61]

38 While the Prosecution accepted that the accused was suffering from adjustment disorder ("AD") at the time of the killing, they argued that he could not avail himself of the partial defence of diminished responsibility as his AD did not substantially impair his mental responsibility.[62] As for the partial defence of grave and sudden provocation, the Prosecution's primary case was that the Humiliating Words – which the Defence relied on as the "provocation - were never uttered and were fabricated by the accused.[63] The Prosecution

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58 PCS, para 27(c).

59 PCS, paras 27(c), 28(c) and 30(a); Prosecution's reply submissions ("PRS"), paras 3–8.

60 PRS, paras 9–17.

61 PCS, paras 26 and 28; 3AB120, para 4.

62 PCS, paras 67, 72 and 91.

63 PCS, paras 36 and 92.

further contended that, in any event, the Humiliating Words were not objectively grave or sudden[64] and that the accused had not been deprived of self-control at the time of the killing.[65]

The Defence's case

39 In their closing submissions, the Defence said that the accused "did not intend to kill [Yati]": according to the Defence, the Prosecution could not prove that the accused "intended to kill [Yati] beyond a reasonable doubt", and the court was urged to "exercise its powers to convict the accused under section 300(c) of the [Penal Code] instead".[66]

40 The Defence also relied on the partial defences of diminished responsibility and grave and sudden provocation. As for the former, the Defence cited the opinion of Dr Ung Eng Khean ("Dr Ung"), whom they called as their psychiatric expert. In reliance on Dr Ung's evidence, the Defence argued that the accused's AD "significantly contributed to his offence by 'making his emotions more labile (unstable) especially exacerbating his feelings of anger as well as reducing his self-control and impairing his judgment (leading to his making inappropriate choices'".[67] As for the latter, the Defence contended that the Humiliating Words had indeed been uttered by Yati to the accused, that these Humiliating Words were objectively grave and sudden, and that they had

64 PCS, para 92.

65 PCS, paras 95, 96 and 98.

66 Defence's closing submissions ("DCS"), paras 4 and 91.

67 DCS, para 73.

caused the accused to lose self-control.[68] Additionally, the gravity of the Humiliating Words was amplified by the accused's AD.[69]

The issues to be determined

41 It was not disputed that the accused had caused Yati's death. As such, the following issues arose for my determination:

(a) whether the accused had intended to cause Yati's death;

(b) whether the Defence had proven the partial defence of diminished responsibility on a balance of probabilities; and

(c) whether the Defence had proven the partial defence of grave and sudden provocation on a balance of probabilities.

42 I address each of these issues in turn.

Whether the accused intended to cause Yati's death

43 At the outset, it should be noted that in putting forward the broad proposition that the accused "did not intend to kill [Yati]", the Defence was really saying two things. Firstly, it was saying that the Prosecution had failed to prove the *mens rea* required for an offence under s 300(*a*) – namely, the intention of causing Yati's death. This was why the Defence's submissions concluded with the suggestion that the accused should be convicted of an offence under s 300(*c*) instead – which would have entailed a finding that the accused's intention was only to cause bodily injury to Yati. Secondly, in saying that the accused "did not intend to kill [Yati]", the Defence was also contending

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68 DCS, paras 36, 58–63 and 69; Defence's reply submissions ("DRS"), paras 13 and 16.

69 DCS, para 68.

that the accused's killing of Yati was not carried out in accordance with a "premeditated plan".[70]

44 I will first deal with the argument regarding the absence of any intention to cause death. In considering this argument, it was important to bear in mind the physical acts which were carried out by the accused against Yati in the moments leading up to her death. These were described by the accused in the investigative statements recorded by the police. I noted of course that at trial, the accused disavowed all references in the investigative statements to any "decision" or "plan" on his part to kill Yati. However, even shorn of these references, the accused's description of the physical acts *per se* was in my view highly instructive as to his intention in carrying out these acts. In gist, he described two separate acts of strangulation: the strangulation performed with a towel, followed by the strangulation using the rope which had been inside his trouser pocket. In addition to (and subsequent to) the two acts of strangulation, he also described how he had pressed down on Yati's nose and mouth using a towel, and finally, how he had twisted her head from left to right. He also described the steps he took in carrying out each of these acts and the degree of force he employed. I set out below the passages from his statements in which the various physical acts were described, starting with the strangulation using the towel:

(a) From the accused's investigative statement of 4 January 2019:[71]

> 77 I was seated beside her at her left when I rounded the towel twice on her neck. I started to pull the towel when she challenged me to kill her. While I was tightening the towel, I pushed her onto the bed … Once, she was in prone position on the bed. I used my right foot to step on one end of the towel

70 PCS, paras 79(a) and 86.

71 2AB994–995.

> onto the bed and I pulled upwards the other end of the towel with my two hands. This was when I saw blood at one of 'Yati' ear [*sic*] …
>
> 78 On the spectrum of 1-10 of strength I applied to pull the towel, 1 as the least strength applied and 10 as the most strength applied. When she was still in the sitting position, I pulled the towel at the strength of 4-5. When she was in the prone position, I pulled the towel at the strength of 7-8. When I saw blood coming out of 'Yati' ear, I pulled the towel at the strength of 10.
>
> 79 She was struggling when I pulled the towel. 'Yati' kicked her legs and she was pulling the towel away from her neck with her two hands. When I started to step on the towel and applied full strength, I saw she was unconscious shortly. I removed the towel and I heard some sound coming from 'Yati' mouth. When I noticed that some sound was coming out from 'Yati', I took the rope from my back pocket. I rounded the rope around her neck for about 2-3 times. I tightened the rope around her neck with the strength at 7. I secured the rope with 2-3 knots. I did not notice any bleeding flowing out from her ear. …

(b) From the accused's investigative statement of 7 January 2019:[72]

> 90 … [A]fter I tied down the knots and before I put on 'Yati's' clothings on her, I could still hear very low sound coming out from 'Yati's' mouth or nose as such *I placed the towel over her face, and I pressed my right hand downwards on top of the towel around her mouth and nose region. I applied a force of 10, out of the spectrum 10* where 1 at the least force used and 10 as the most force used. *I held my right [hand] for about 10 to 15 seconds before I let go of my hand.* The sound stopped when I let go of my hand. I removed the towel from her face … I did not observe any bleeding from 'Yati' at her face areas but I observed her face turned blackish. …
>
> 91 … *[A]fter I pressed her mouth and nose downwards, I twisted 'Yati' head from left to right once and let go. I applied a force of about 6-7, out of the spectrum 10* where 1 at the least force used and 10 as the most force used. …
>
> [emphasis added]

45 Apart from the description given in his investigative statements, during a site visit and "scene re-enactment" at the Hotel on 7 January 2019, the accused

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72 2AB999.

also gave a demonstration to ASP Teo of how he had strangled Yati, first with the towel and then with the rope.[73]

46 By and large, the accused's description of the physical acts carried out against Yati in the moments leading up to her death was borne out by the forensic pathologist's (*ie*, Dr Lee's) findings as to the injuries sustained by Yati and the cause of her death.[74] In the re-enactment he carried out for ASP Teo on 7 January 2019, the accused had demonstrated how he had placed the rope[75] around Yati's neck, crossed it behind her neck, then "rounded" it around her neck, and finally tied a series of knots in the rope.[76] In examining Yati's body, Dr Lee noted that a ligature in the form of a grey fabric rope was found around her neck, tied as follows: it was wound a total of four times around her neck, "first wound twice around the entire neck, immediately over the skin and under the hair around the back of the neck", "then wound twice around the entire neck, going over the hair around the back of the neck", and "knotted with a granny knot measuring 1.5 x 1.5 x 1 cm at the left side of the front of the neck".[77] Dr Lee also noted a "complex ligature mark" which was "present circumferentially around [Yati's] neck, corresponding to the overlying ligature".[78] A dissection of the neck revealed the following injuries: haemorrhages in the thyrohyoid muscles bilaterally; pre-vertebral haemorrhage around the midline at the level of the C4/5 cervical vertebrae; dislocation of the C4/5 intervertebral joint; and

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73 2AB955–959, paras 43–59; also 2AB1005–1012.

74 1AB22–27.

75 This was referred to as a "string" by ASP Teo in her conditioned statement at 2AB958, but it was not disputed that the item referred to was the rope which the accused had kept in his trouser pocket.

76 2AB957–958, paras 53 and 54.

77 1AB23–24.

78 1AB24.

extensive epidural haemorrhage within the cervical spinal canal.[79] Dr Lee concluded that the cause of death was "strangulation and cervical spine injury".[80] None of Dr Lee's findings was challenged by the Defence at trial.

47 Indeed, although at trial the accused denied vehemently having said anything about a "decision" or a "plan" to kill Yati, he did not disavow the bulk of the narrative he had provided in his statements about the physical acts carried out against Yati in the moments leading up to her death. What he did dispute in cross-examination was, firstly, the number of times he had placed the towel around Yati's neck before finally strangling her: in his statements, he described the strangulation as having taken place on the third occasion when he had placed the towel around her neck; in cross-examination, he claimed that he had placed the towel around her neck a total of four times and that he had only tightened the towel on the fourth occasion.[81] In addition, he denied that he had committed the subsequent acts of strangulation with the rope, pressing on Yati's mouth and nose, and twisting of her head because he thought that she was not yet dead and wanted to ensure that she would not survive: according to his oral testimony, by the time he came to use the rope, he already "thought she had died".[82]

48 Neither of the above objections went towards refuting the account given in his statements of the physical acts carried out against Yati in the moments leading up to her death. In my view, the number, the nature and the sequence of these physical acts clearly demonstrated an intention to cause Yati's death. To put it bluntly, the accused visited multiple, successive acts of violence on

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79 1AB25.

80 1AB27.

81 Transcript of 24 September 2020, p 46 line 20 to p 47 line 30.

82 Transcript of 24 September 2020, p 51 line 28 to p 53 line 18.

Yati within a short span of time. This was not, moreover, a case of mere slaps or punches: he strangled her twice using two different implements, pressed down hard on her mouth and nose ("a force of 10, out of the spectrum 10"), and twisted her head from left to right. He could not have intended anything else other than her death.

49 It should also be pointed out that although in his interviews with Dr Ung the accused denied having formed any plan to kill Yati prior to 30 December 2018, Dr Ung's notes of the interview on 19 May 2020 recorded the accused as having said that he had "decided to kill [Yati] on 3rd time of strangling (on 30th December 2018)".[83] At trial, the Defence did not challenge the accuracy of this portion of Dr Ung's notes. That the accused himself had admitted to having "decided to kill [Yati] on 3rd time of strangling (on 30th December 2018)" further supported the inference that his intention at the time of carrying out the physical acts of strangulation was to cause Yati's death.

50 For the reasons set out in [44]–[49], I was satisfied that the accused's intention at the material time was to cause death.

Whether the accused's killing of Yati was carried out in accordance with a "premeditated plan"

51 In submitting that the accused "did not intend to kill [Yati]", the Defence's other contention was that the killing was not carried out in accordance with a premeditated plan. According to the accused, he had merely "thought" about killing Yati prior to 30 December 2018 but had not formulated any real plan nor come to a firm decision to do so. Instead, he had simply lost all self-control and acted impulsively on 30 December 2018 upon hearing Yati

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83 3AB21.

utter the Humiliating Words to him in the Room. This version of events – as presented to Dr Ung and at trial – turned on two key factual propositions: firstly, that various statements documented in the accused's police statements and in his interviews with Dr Cheok could not be relied on because he had never made those statements; and secondly, that the Humiliating Words had indeed been spoken by Yati to the accused on 30 December 2018.

Whether the accused told the police in his investigative statements that he had decided to kill Yati

52 I address first the accused's claims about the statements recorded from him by the police. The accused claimed that he had "never told [ASP Teo] and the Interpreter of his Section 22 CPC Statements that he 'decided' to kill [Yati]".[84] In this connection, the accused came up with a number of allegations against Mohammad Zahurul Hasan ("Hasan"), who had acted as the Bengali interpreter for the recording of all five of his investigative statements. According to the accused, Hasan spoke in a "very literary" and "well-educated" language; and the accused did not understand some of the words used by Hasan.[85] In particular, according to the accused, he had "never heard or used" the Bengali word for "decide" until Hasan used it.[86] In fact, he had not even realised the meaning of the word "decide" until his cell-mate at Changi Prison got hold of his statements.[87] The accused himself had never told Hasan that he had "decided" to kill Yati. What he had said was that he had been "thinking" about whether to kill her after discovering her infidelity and asking himself how

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84 DCS, para 8.

85 Transcript of 23 September 2018, p 8 lines 1–10.

86 Transcript of 23 September 2018, p 10 lines 1–8.

87 Transcript of 23 September 2018, p 8 lines 12–23.

he should deal with her: it was Hasan who had used the word "decided" in interpreting what he (the accused) had said.[88]

53 Thus, for example, in paragraph 20 of his investigative statement of 3 January 2019, the accused was recorded as having said this:[89]

> … On 9 December 2018, when [Yati] first told me that she had a new boyfriend, *I decided that I wanted to kill her.* [emphasis added]

According to the accused, the italicised words were never said by him to Hasan or to ASP Teo. Instead, what he had told Hasan was this:[90]

> … [O]n 9th December, I was so angry. I was very angry. So I was telling myself, *'What should I do? How should I deal with her? Should I kill her? … [W]hat was the correct way to handle this?' Whether I should slap her, should kill her, what is the correct way to handle her, I did not know.* That's what I told Mr Hasan. [emphasis added]

54 I rejected the accused's assertion that he had "never told [ASP Teo] and [Hasan] that he 'decided' to kill [Yati]". I found the accused's evidence about what he had purportedly said to Hasan and about Hasan's alleged errors in interpreting his statements to be entirely unbelievable. My reasons were as follows.

55 Firstly, the evidence from Hasan[91] – which was not disputed – showed that at the end of the recording of each investigative statement, that statement would be read back and interpreted to the accused on the same day, and the accused would be asked if he wished to make any amendments. It was also not

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88 Transcript of 22 September 2020, p 21 line 3 to p 22 line 25; p 31 lines 13–29.

89 2AB981.

90 Transcript of 22 September 2020, p 22 lines 21–25.

91 Transcript of 16 September 2020, p 26 lines 1–14.

disputed that on 3 January 2019, the accused had made various amendments to the investigative statement recorded from him that day. These were the handwritten amendments seen, for example, at paragraph 15 of the statement, wherein the accused had volunteered additional details about Yati's spare phone and about how he had returned her the phone he had taken from her earlier.[92] Similarly, on 4 January 2019, the accused also made various amendments to the investigative statement recorded from him that day, and these were again handwritten in the body of the said statement. For example, the handwritten amendments at paragraph 67 of the statement of 4 January 2019 showed that the accused had volunteered additional details about the rope which was eventually used to strangle Yati.[93] On 7 January 2019, the accused had also made amendments to the investigative statement recorded from him that day. Thus, for example, the handwritten amendments at paragraph 98 of the statement of 7 January 2019 showed that the accused had volunteered additional details about how he had noticed blood stains on the towel – but not blood coming out from Yati – at the point when he started putting her clothing on her body and positioning her body on the bed.[94]

56 The accused did not deny that the handwritten amendments in his investigative statements were made at his request at the end of the recording of each statement. In addition to being given the opportunity at the end of the recording of each statement to make amendments to that statement, the statement-recording on 4 January 2019 and on 7 January 2019 was preceded by Hasan reading back and interpreting to the accused the statement(s) recorded in the previous session(s), and ASP Teo asking the accused (through Hasan) if he

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92 2AB979.

93 2AB992.

94 2AB1001.

wished to make any amendments to the previous statement(s). This meant that on 4 January 2019, before any statement was recorded from the accused, the statement of 3 January 2019 was read back and interpreted to him; and he was asked if he wished to make any "correction, deletion or addition to it". Similarly, on 7 January 2019, before any statement was recorded from the accused, the statements of 3 January 2019 and 4 January 2019 were read back and interpreted to him; and he was asked if he wished to make any "correction, deletion or addition" to those statements. This process was documented at the start of the statements of 4 January 2019 and 7 January 2019 respectively.[95] As for 8 January 2019, the accused refused to have his statements of 3 January 2019, 4 January 2019 and 7 January 2019 read back to him, and informed ASP Teo that he did not wish to make any correction, deletion or addition to those statements.[96]

57 On each occasion on 4 January 2019 and 7 January 2019, the accused requested to make various amendments to his previous statements. In particular, on 4 January 2019, when his statement of 3 January 2019 was read back by Hasan and the accused was asked if he wished to make any correction, deletion or addition to that statement, he specifically requested to amend paragraph 20. This was the paragraph with the sentence "I decided that I wanted to kill her". The accused requested that the following sentences be added at the end of paragraph 20:[97]

> Every day, I received call from 'Yati' at 9.30pm. After she had relationship with 'Hanifi', she did not call me. When I tried to call her, I found her phone engaged until 11.30 pm. All these made me angrier. Basically, when I could not talk to her, I felt very angry.

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95 2AB987 and 2AB998.

96 2AB1019.

97 2AB989, para 52.

58 It should be added that Hasan testified that the accused raised no complaints in the course of the recording of his statements. Certainly he did not complain that he could not understand Hasan or that Hasan had misinterpreted parts of his statements. Hasan's testimony in this respect was not challenged by the Defence.

59 I found it telling that the accused had his statements read back to him several times, that he was presented with multiple opportunities to amend those statements, and that he did make amendments (including substantive amendments). It raised serious questions as to why the accused did nothing about those parts of the statements in which he was recorded as saying he had "decided" to kill Yati. Even more tellingly, when pressed to clarify exactly what he had said to Hasan and how Hasan had interpreted his statement back to him, the accused's evidence became increasingly incoherent and unbelievable. I take paragraph 20 of the accused's statement of 3 January 2019 as an example. In examination-in-chief, although he started by claiming that he had told Hasan he was "thinking" about what to do and whether to kill Yati, he shifted after a while to claiming that "[t]hese words came from … Hasan".[98] According to him:[99]

> [Hasan] asked me, 'When did you think of killing Yati?' My answer was, 'December 9th.' That time, he told me, 'So you have decided to kill her.' And I didn't understand the big Bengali word and I said, 'Yes.'

60 In cross-examination, when the accused was asked what Bengali word Hasan had used for "decided" when reading the statement back to him, the accused prevaricated, initially claiming that he was "thinking of many things,

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98 Transcript of 22 September 2020, p 31 line 23.

99 Transcript of 22 September 2020, p 31 lines 16–29.

particularly like [his] family" at the material time and that he "[did] not really remember what [Hasan] said because at that time, [he] did not really pay attention [to] what [Hasan] was saying".[100] This was despite his having said in examination-in-chief that Hasan had used "the big Bengali word" which he could not understand. When it was pointed out to him that he had managed to make multiple amendments to the statement of 3 January 2019 and even to paragraph 20 itself, the accused's testimony shifted again: he claimed that "[s]ometimes [he] heard [Hasan], sometimes [he] did not"; that "[s]ometimes [he] felt like talking, sometimes [he] didn't feel like talking";[101] and that although he had made some amendments to that statement, "after a while [he] really got irritated" so he had told Hasan there was "[n]o need to read everything" back to him before signing off on the statement.[102]

61 With respect, the above evidence made no sense, since it was clear that despite his avowed lack of interest in the contents of the statement being read back to him, the accused had nevertheless made *substantive* amendments to various parts of the statement, including paragraph 20. Indeed, in respect of paragraph 20, when this was read back to him on 4 January 2019, not only had he volunteered details of Yati's failure to call him at night after she started a relationship with Hanifa and of his own anger at her behaviour (as noted at [57]), he had even added details about her trip to collect "two boxes of facial cream" from a friend on 30 December 2018 prior to their going to the Hotel.[103] Given his attention to detail *vis-à-vis* the contents of paragraph 20, it beggared belief

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100 Transcript of 24 September 2020, p 4 line 28 to p 5 line 18.

101 Transcript of 24 September 2020, p 9 lines 4–11.

102 Transcript of 24 September 2020, p 8 lines 17–28.

103 2AB989, paras 51–52.

that he should have failed to pay attention to the crucial sentence, "I decided that I wanted to kill her".

62 It appeared that the accused realised the tenuous quality of the above evidence because when questioned further by the Prosecution, he suddenly asserted that Hasan had used the Bengali word "*sirdhanto*", which meant "decide". Indeed, not only did the accused purport to recall Hasan's use of the word "*sirdhanto*", he was able to contrast this with the court interpreter's use of the word "*thik*" (which the latter had explained was an "easier" Bengali word for "decided") and to assert that he himself had used the Bengali word "*bahapchi*"[104] (translated by the court interpreter as "thinking"[105]):[106]

> [F]rom … your mouth [*ie*, the court interpreter], two words came out. One is *thik kora ci*. Another is *sirdhanto*. Hasan said, '*Ami sirdhanto niyechi*.' And you [*ie*, the court interpreter] said '*Ami thik kora [ci]*.' And I said, '*Ami papci* [*ie*, *bahapchi*]'. I always wanted to say, '*Ami papci* [*ie*, *bahapchi*].' I do not know how this word got changed. I do not know.

63 Having given the above evidence, when he was asked by me to confirm that Hasan had used the word "*sirdhanto*", the accused appeared to baulk at providing such confirmation. On the one hand, he appeared to retreat at one point to his earlier claims about not remembering what Hasan had said. He also claimed that in fact, he did not know the two words "*sirdhanto*" and "*thik*" (as in "*thik kora ci*"), despite having – just moments prior - distinguished these two words from the word "*bahapci*" which he said he had used.[107] On the other hand, he also subsequently claimed that where he was recorded as having said that he

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104 Misspelt as "*papci*" in the transcript of 24 September 2020, p 13 line 4.

105 Transcript of 22 September 2020, p 29 line 29 to p 31 line 9.

106 Transcript of 24 September 2020, p 13 lines 1–5.

107 Transcript of 24 September 2020, p 13 line 6 to p 14 line 5.

had "decided that [he] wanted to kill Yati" (paragraph 20 of the 3 January 2019 statement) and that he had "decided to kill her" (paragraph 27 of the same statement), "[t]he sentences were formed by [Hasan]".[108] When asked to clarify what he meant when he said these sentences had been "formed" by Hasan, he claimed – after much stalling and equivocation – that Hasan had asked him, "Have you decided that you wanted to kill her", to which he had said "yes".[109] When asked why he had said "yes" if he had never used the word "decided" himself, he claimed that he had said "yes" because he did not know the meaning of the word "decided" and understood Hasan to be simply asking him if he had killed Yati.[110]

64 In further cross-examination,[111] the accused was referred to Question 5 in his statement of 4 January 2019, in which ASP Teo had focused specifically on the sentence in paragraph 20 of his 3 January 2019 statement, "On 9 December 2018, when she ('Yati') first told me that she had another boyfriend, I decided that I wanted to kill her", and asked him to "further elaborate on this". In response to ASP Teo's request for further elaboration, the accused gave the following response:[112]

> 67 I was inside my dormitory when I found out that 'Yati' got a new Bangladeshi boyfriend. It happened on 9 December 2018 in the evening. I was so angry and I told myself that I would kill 'Yati'. I looked around and found the rope that was near my bed. The rope could be found attached at the hood of the jacket. It was soft, tough, and easy for me to keep the rope inside my pocket. I knew that I could strangle her to death. I chose the hotel because I would not be able to strangle her in other locations. Besides, I had a plan to question her to see if

108 Transcript of 24 September 2020, p 28 lines 14–17.

109 Transcript of 24 September 2020, p 28 line 19 to p 30 line 19.

110 Transcript of 24 September 2020, p 30 lines 20–30.

111 Transcript of 24 September 2020, p 11 lines 3–27.

112 2AB992.

> she agreed with me or not. I wanted her to promise me to break up with her boyfriend. If she listened to me and broke up the relationship, I would not kill her. I told myself that I would bring the rope with me and kill 'Yati' the next time we were in the Hotel.
>
> 68 I did not meet 'Yati' on 16 December 2018. I brought my rope with me on 23 December 2018. On 23 December 2018, when we were in the hotel, she answered all questions and agreed with me that she would continue to meet me. When I asked her about the new relationship, she told me that she did not meet [Hanifa] and they merely talked on phone and Facebook messenger. So, I decided not to proceed with my plan as she did not make me angry.
>
> 69 On 30 December 2018, I met 'Yati' in the hotel. She did not agree with me. She did not want to break up with [Hanifa]. I strangled her to death.

65 Again, the accused's responses in paragraphs 67–69 of his 4 January 2019 statement were telling, because ASP Teo had specifically drawn his attention to the sentence containing the words "I decided that I wanted to kill her". That he could have failed to notice at that juncture the use of the word "decided" again beggared belief. Indeed, having had his attention drawn to the said sentence, he responded to the request for elaboration by supplying details of his "plan" – namely, to question Yati to see if she would agree to break up with her new boyfriend, and to kill her if she did not agree. In other words, far from denying any decision to kill Yati, the accused's response affirmed the earlier statement about his decision to kill her.

66 At trial, of course, the accused did not accept that he had said anything about a decision or a plan to kill Yati. When he was asked how Hasan had interpreted the words "I decided that I wanted to kill her" when interpreting Question 5 to him, his answers became increasingly convoluted and unbelievable. First, he claimed that Hasan had used the Bengali words for both "think" and "decide" when interpreting Question 5. He claimed that he did not remember exactly whether Hasan had used the Bengali word "*sirdhanto*" or

"*thik*" – but he appeared quite certain that the word "*bhabso*" was used by Hasan for "think". He even suggested that there were "many" Bengali words which could be used for the English word "think". However, when the Prosecution sought to get him to pin down the meaning of the Bengali word "*bhabso*", he again shifted position and declared that he had believed all three words – "*sirdhanto*", "*thik*" and "*bhabso*" – to "[mean] the same thing". On being questioned further by the Prosecution, his answers became entirely illogical as he vacillated between repeating that Hasan had used the Bengali word "*bhabso*" and denying any memory of what Hasan had said. I set out below the relevant extract from the trial transcript:[113]

Accused:	How did he translated this question [*ie*, Question 5] to me, I do not fully remember. I remember a little bit. If you want me to tell you, I can tell you.
…	
Accused:	He told me, 'When did you think that you will kill Yati?' My answer was 9th December. Then he again said on 9th – I do not exactly remember which Bengali word he said, whether it was '*sirdhanto*' or '*thik*' … But I didn't understand it fully. I didn't think about it. I said yes.
Court:	Sorry, you said yes in answer to what exactly?
Accused:	He said, 'On that date, you decided to kill her?' I said yes. This is how the whole thing went.
Court:	… So what word did Hasan use for 'think' when he said, 'When did you think you will kill Yati'?
Accused:	'*Bhabso*'. This English word 'think' – how many Bengali words can be used for 'think'. If you want to know, then all my problems will be solved.
…	
Accused:	He asked me in simple way, 'When did you *bhabso* to kill her?' Then I said, 'Yes, 9th December.'

[113] Transcript of 24 September 2020, p 16 line 10 to p 19 line 10.

DPP: What does the word '*bhabso*' mean to you?

…

Accused: – '*bhabso*', '*thik kora*', '*sirdhanto*', I thought all these words meant the same thing.

DPP: … when [Question 5] was posed to you and interpreted by Hasan, the word that Hasan used was '*bhabso*'? You recall now that he used the word '*bhabso*'?

Accused: All these words, he used. So I used whatever word – I followed his words, whatever he used.

DPP: … when Mr Hasan interpreted question 5 to you, how did he interpret the phrase or how did he interpret 'I decided that I wanted to kill her'? What word did he use to interpret 'decide' or 'decided'?

Accused: I told you earlier I do not exactly remember.

DPP: So your answer is that you do not exactly remember, right?

Accused: Yes, I do not remember.

DPP: Right. So earlier, when you said '*bhabso*' when you said … Mr Hasan said '*bhabso*', did he actually say '*bhabso*' or is it the case that you can't remember now?

…

Accused: … I had limited knowledge when he asked me. He asked the question … like this in simple Bengali, 'When did you think of killing her?' He used the word '*bhabso*'. If a simple Bangladeshi person asks you, 'When did you think of killing a person?', the simple word they used, '*bhabso*', '*cinta*' – they used those words – he used those words.

Court: Sorry, 'he used those words', who used those words?

Accused: People used those words but Hasan, exactly what word he used, I do not remember.

67 I have set out in some detail the accused's evidence in order to illustrate the evasiveness he displayed as he flip-flopped between different – often

opposing – positions. In my view, the accused plainly appreciated that his attempt at trial to disavow all previous statements about having "decided" to kill Yati lacked credibility, given, *inter alia*, the many opportunities he had been given to amend and/or to elaborate on those previous statements. In consequence, he became extremely skittish about being pinned down to any definite account of how exactly those statements had been interpreted to him; and to resist nailing his colours to the mast (so to speak), he would jump from one position to another, alternating between proclaiming his inability to recall Hasan's words and attributing all sorts of statements to Hasan. In short, his story about having merely told Hasan he was "thinking" about killing Yati was precisely that – a story, made up as an afterthought, to explain away the incriminating portions of his statements.

68 Moreover, if in fact all that the accused had told Hasan was that he was "thinking" about whether to kill Yati, there was no reason for Hasan to convey to ASP Teo something entirely different. From the accused's own evidence at trial, assuming he had said in Bengali that he was "thinking", he would have used either the word "*bahapchi*" or the word "*bhabso*". It was simply not possible that Hasan – a certified interpreter of 18 years' standing – would have confused these Bengali words for "think" with the Bengali words for "decide" ("*sirdhanto*" or "*thik*"). The Defence did not suggest to Hasan that he had somehow misheard the accused.

69 As for the suggestion that Hasan had used the word "decide" in posing questions to the accused and that the accused had simply said "yes" to his question without knowing what the word meant, I found this suggestion equally unbelievable. I have explained earlier why I found the accused's evidence in this respect to be riddled with inconsistencies and lacking in credibility. It should also be noted that in cross-examining ASP Teo, Defence counsel had put

it to her that every specific question she had asked of the accused during the statement-recording was recorded in the body of the relevant statement; and that if there were any other questions, they would have been merely of a clarificatory nature, along the lines of "You said this. I don't understand what it means".[114] According to the Defence's case, therefore, it would have been Hasan himself (and not ASP Teo) who took the initiative to introduce the word "decide" into the recording process when the accused had never used the word at all and did not even know what it meant. In my view, this was an entirely baseless proposition. The Defence did not suggest why – in the absence of any specific questions from ASP Teo as to whether or when the accused had decided to kill Yati – Hasan should have found it necessary to put such questions of his own to the accused. Certainly I could not see any reason why – as the interpreter – Hasan would have gone on such a frolic of his own and put words in the accused's mouth.

70 For the reasons set out in [55]–[69], I did not believe the accused's denial of a premeditated plan to kill Yati. I found that the accused did indeed tell the police that as early as 9 December 2018, he had decided he wanted to kill Yati after learning of her new relationship (paragraph 20 of the 3 January 2019 statement); and further, that his plan was to ask her to break up with her new boyfriend – and to kill her if she did not agree (paragraph 67 of the 4 January 2019 statement).

Why the accused brought the rope along with him on 30 December 2018

71 The existence of such a plan was corroborated by the accused's own admissions in his investigative statements as to why he had brought a rope along

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114 Transcript of 16 September 2020, p 116 lines 10–15.

with him on 30 December 2018. In his statement of 3 January 2019, the accused said that the rope "belonged" to one of his old jackets, and that although he had discarded the jacket long ago, he had kept the rope "to be used to tie [his] laundries together before washing".[115] He said at one point that he "chose to kill 'Yati' with a rope with no real reason".[116] However, he also explained that he "felt that rope was easy to keep in the pocket" and that he had concerns about "sharp weapon[s] like knife" which he knew were "prohibited to carry in public".[117] As noted earlier, when he was subsequently asked on 4 January 2019 to elaborate on his earlier statement (in paragraph 20 of the 3 January 2019 statement) that he had "decided that [he] wanted to kill [Yati]", the accused disclosed that on 9 December 2018, when he became "so angry" on hearing of Yati's new boyfriend and "told [himself] that [he] would kill [her]", he had looked around and found the rope. It will be recalled that he also explained[118] that this rope was "soft, tough, and easy … to keep … inside [his] pocket". His plan was to kill Yati if she refused to leave her new boyfriend: he knew that he could strangle her to death, and he "told [himself] that [he] would bring the rope with [him] and kill 'Yati' the next time [they] were in the Hotel".[119] He did in fact bring the rope with him on 23 December 2018 but did not kill Yati that day because she agreed to continue seeing him and assured him that she did not meet with Hanifa.[120] On 30 December 2018, however, she refused to break up with Hanifa, and the accused "strangled her to death".[121]

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115 2AB981, para 21.

116 2AB981, para 21.

117 2AB981, para 21.

118 2AB992, para 67.

119 2AB992, para 67.

120 2AB992, para 68.

121 2AB992, para 69.

72 At trial, contrary to the account he had given in his investigative statements, the accused claimed that the presence of the rope in his pocket on 30 December 2018 was entirely fortuitous. According to the accused, he had used the rope to tie his laundry on 9 December 2018. While doing his laundry that day, he had been talking to Yati on the telephone and had become "very angry" upon hearing about her new boyfriend. It was at that point that it "came to [his] head that [he] will kill her with that rope". He put the rope in his pocket after finishing his laundry. The next day, he reconciled with Yati, and "everything was okay". He did not bother to remove the rope from his pocket, because in any event he "always" kept the rope in his pocket. He wore the same pair of trousers (with the pocket containing the rope) when he went to meet Yati on 23 December 2018 and on 30 December 2018, because these were the trousers he "usually" wore: these trousers had "quite a number of pockets", and he wore them for going out. Since he wore the same pair of trousers on 23 December 2018 and 30 December 2018, the rope "was with [him] as well" inside the pocket, but he "didn't carry that rope to kill [Yati]" on 30 December 2018: it just so happened that the rope was "[a]lways in [his] pocket".[122]

73 I did not believe the accused's narrative at trial about why he had the rope with him on 30 December 2018. My reasons were as follows. Quite apart from the details which the accused himself had volunteered in paragraph 67 of his 4 January 2019 statement, in that same statement-recording session, ASP Teo had drawn his attention to his mention of the rope in paragraph 21 of his 3 January 2019 statement and had specifically asked him to elaborate on

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122 Transcript of 22 December 2020, p 32 lines 2–27.

why he had taken a rope with him on 30 December 2018.[123] I reproduce below the accused's response to ASP Teo:[124]

> 70 Since 9 December 2018, I decided that I would bring with me the rope when I knew we would be going to a Hotel. Usually, we would plan on Friday, and we would confirm if we were going to the Hotel on Saturday. So, on Sunday, I would know that I need to bring the rope with me.
>
> 71 Between 23 December 2018 to 30 December 2018, I was quarrelling with 'Yati' everyday about [Hanifa]. At night, I tried to call 'Yati' but 'Yati' number was always engaged. During the day time, I called 'Yati' and she received the call. I asked her why she did not pick up my call. I also asked her why she was closer with [Hanifa] and forgot me. During this time, 'Yati' blocked my number and me in Facebook. I was not sure if it happened on Thursday and Friday. I contacted 'Yati's' mother in Indonesia. However, I was unable to speak Malay and her mother was unable to speak in English. I then messaged 'Yati's' sister to seek her help to get 'Yati' to contact me. About half an hour later, 'Yati' called me. 'Yati' said that our relationship had ended on 23 December 2018 when she paid me the last $500. She also said that she had sex with me as per my request so everything was over. I insisted to meet her and talk to me in person. She agreed to meet up with me and she told me that it would be the last time we met. I was very angry and I knew that I would kill her when I met her on 30 December 2018.
>
> 72 In fact, I wore the same pant and shirt on 23 December 2018 and 30 December 2018. I did not remove the rope from my back pocket on 23 December 2018. Although I did not remove the rope from my back pocket on 23 December 2018, I knew that the rope was inside my pocket when I was going to meet 'Yati' on 30 December 2018. I deliberately chose the same set of attire so that I would bring the rope out with me.

74 Again, I found the above response telling because it was provided by the accused after his attention had been drawn by ASP Teo to the issue of the rope. If the presence of the rope in his pocket on 30 December 2018 was merely fortuitous, one would have expected him to say so to ASP Teo. He did not.

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123 2AB992, Question 6.

124 2AB992–993.

Indeed, reading the above response together with his response in the preceding paragraphs 67–69 of the same statement, it was clear that the rope played an integral part in his plan to kill Yati: he chose it because it was tough, yet easy to keep in his pocket; he knew he could strangle Yati with it; he planned to strangle her in a hotel; and he made sure to bring the rope with him whenever he knew he and Yati would be going to a hotel. This was why he had the rope with him on 23 December 2018 and on 30 December 2018. In other words, the fact that he had the rope with him on 30 December 2018 was the result of a considered decision: it was not a coincidence nor an accident of ill fortune.

75 At trial, the accused sought once again to blame Hasan for those portions of his statements which dealt with his possession of the rope. According to the accused, he knew that he had killed Yati with the rope; he "didn't want to explain everything" and "wanted to cut short the whole thing":[125]

> So whatever [Hasan] said about the rope, I said, 'Yes, yes.' And the question came from Hasan about the rope and I said, 'Yes.'

76 I found the accused's explanation unbelievable. His assertion that he had "wanted to cut short" the statement-recording – and that he had simply answered "Yes, yes" to whatever Hasan asked about the rope – was refuted by the contents of his investigative statements, which showed that he had taken the trouble to provide various details about the rope: for example, the fact that the rope had been part of an old jacket; the use he had habitually made of it when doing his laundry; the ease with which it could be kept in his pocket, as compared to a prohibited weapon such as a knife; and his decision to bring it with him after 9 December 2018 whenever he knew he and Yati would be going to a hotel. These were details which Hasan could not have known, and which –

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125 Transcript of 22 September 2020, p 32 line 28 to p 33 line 5.

even if Hasan had asked about the rope – could not have been conveyed via the brief answer "Yes, yes". They were details which had to have been volunteered by the accused himself. The same reasoning would apply even if it was ASP Teo who had asked the accused (through Hasan) about the rope – although in this connection, I should add that it was never put to ASP Teo that *she* had asked the accused questions about the rope, nor were any such questions by her recorded in the statements.

77 Finally, the Defence argued that the fact that the accused had used a towel to strangle Yati showed that "the rope was not part of a pre-meditated plan to kill [Yati] with that particular item".[126] With respect, this argument ignored facts which the accused himself had volunteered. It was not disputed that there were two acts of strangulation – the first involving the use of the towel, the second involving the use of the rope. According to the accused's narrative, the rope was kept in the pocket of his trousers on 30 December 2018, just as it had been kept there on 23 December 2018. At the point of the first act of strangulation, both the accused and Yati were naked.[127] In other words, the accused did not have the rope close at hand at that point. He did have the towel in his hand at that point, according to his narrative. He had already "rounded" the towel around Yati's neck twice – and at one point, even around his own neck – while trying to convince her to break up with Hanifa and to stay in a relationship with him (the accused) until his return to Bangladesh.[128] When she refused and when he told her "Today, I will kill you", he was holding the same towel and he "rounded" her neck with it again. He started to tighten the towel after she "challenged" him to kill her; and this was how he came to strangle her

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126 DCS, para 23.

127 2AB981, para 22.

128 2AB982, para 26; 2AB993–994, paras 73–75.

with the towel.[129] In the circumstances, the use of the towel in the first act of strangulation was purely a matter of convenience: the towel was what the accused happened to have in his hands when Yati made the fatal decision to refuse once more his plea that they continue their relationship. Significantly, when he decided to commit the second act of strangulation, he chose to do so with the rope, which he took from his trouser pocket; and from his own narrative, his use of the rope was not some hasty fumbling act but a deliberate one involving, *inter alia*, the "crossing" of the rope behind Yati's neck and the tying of several knots.[130]

78 For the reasons set out in [73]–[77], I accepted the Prosecution's submission that the accused had brought the rope with him on 30 December 2018 as part of a premeditated plan to kill Yati.

Whether the accused's statements to Dr Cheok should be given any weight

79 In addition to challenging the incriminating portions of his investigative statements in which he had spoken of his decision to kill Yati and his plan to use the rope, the accused also took issue with Dr Cheok's interview notes. The Defence's main objections were in respect of certain parts of these interview notes in which Dr Cheok had recorded the accused relating to him a "plan" to kill Yati. According to the Defence, no weight should be given to those parts of Dr Cheok's interview notes because various defects in the interview process for all three interviews rendered the interview notes unsafe to rely on. In particular, the Defence objected to any weight being given to the following statements and comments recorded by Dr Cheok in his notes:

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129 2AB994, para 75.

130 2AB957–958, paras 53 and 54.

(a) From the interview notes of 21 January 2019:[131]

> He [*ie*, the accused] planned to take [Yati to a] hotel, he brought a rope with him to strangle her.
>
> …
>
> 'I spent so much money'
>
> 'If she had waited 1 month for me to go home'
>
> …
>
> He had planned to kill her; if she apologised and agreed to be in a relationship for 1 more month, he would not kill her
>
> …
>
> He had brought rope to the hotel in his pants pocket

(b) From the interview notes of 25 January 2019:[132]

> Q: When did you start to think about killing her
>
> A: About 9 Dec, I went to see her at her place in Serangoon. On that day, she came down and started scolding me and spoke to me very angrily. On previous occasions, she would embrace me. On 9 Dec, I called her around 1 pm. She did not pick up phone, I called many times and left voice messages. I spoke vulgarities, 'fucking woman'. Then finally when I could not contact her at 7 pm I went to Serangoon. I overheard she was talking to employer that someone is disturbing me 'can I call the police'. I started thinking of killing her in June 1x and July 1x and she cried and stopped seeing him and I stopped thinking about killing her. On Dec 9, I started planning to kill her. …

80 The Defence argued that it was unsafe to rely on Dr Cheok's notes because – according to the accused – Dr Cheok already had the accused's police statements at the first interview on 21 January 2019;[133] Dr Cheok conducted nearly all of the first interview and at least half of the second interview in

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131 3AB152.

132 3AB161.

133 Transcript of 18 September 2020, p 84 lines 19–22.

English without the Bengali interpreter being present;[134] and Dr Cheok merely asked a few questions about the accused's sleep while omitting to ask any case-related questions during the third interview.[135]

81 I found the Defence's objections to Dr Cheok's interview notes to be without merit. Notably, the accused's allegations about the Bengali interpreter's absence for the most part during these interviews were unsupported – indeed, controverted – by the objective evidence. In respect of the first interview by Dr Cheok on 21 January 2019, the CAMS tracking report maintained by the prison authorities showed that Dr Cheok had arrived for the interview at the Changi Medical Complex at 1.57pm on that day, while the Bengali interpreter Md Sirajul Islam ("Sirajul") had arrived at 2.18pm. Subsequently, Sirajul had left at 3.44pm while Dr Cheok had left at 3.46pm.[136] The CAMS tracking report showed, therefore, that Sirajul had arrived soon after Dr Cheok's arrival, and not towards the end of the interview as the accused claimed. Dr Cheok's evidence was that the 21 minutes prior to Sirajul's arrival would have been used as "some degree of administrative time" (escorting the accused to the interview room, uncuffing him, getting him seated, cuffing him again and so on).[137] The formal interview would have started with his recording the accused's personal particulars and explaining the purpose of the interview as well as the issue of confidentiality *vis-à-vis* the contents of the interview: Sirajul would have been present right from the start of the formal interview.[138] Dr Cheok's evidence on

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134 Transcript of 22 September 2020, p 50 lines 5–32; p 52 lines 9–12; DCS, paras 29–32; DRS, para 10.

135 Transcript of 22 September 2020, p 52 lines 1–3; transcript of 23 September 2020, p 79 lines 22–32.

136 Transcript of 25 September 2020, p 114 lines 3–16.

137 Transcript of 25 September 2020, p 114 line 17 to p 115 line 11.

138 Transcript of 25 September 2020, p 129 line 8 to p 130 line 11.

this score was corroborated by Sirajul himself.[139] I should add that given the terminology which would have had to be explained to the accused when he was briefed about the purpose of the interview ("psychiatric assessment", "Institute of Mental Health", "confidentiality", *etc*), I found it extremely unlikely that Dr Cheok would have attempted to explain the various terms to the accused in English. At the same time, given the accused's indisputably limited grasp of English, it was also extremely unlikely that Dr Cheok could have elicited all the information recorded in his interview notes without the assistance of an interpreter.

82 It should be pointed out that in making allegations about Sirajul's absence on 21 January 2019, the Defence appeared to have misunderstood some of the evidence. The Defence claimed that Dr Cheok's interview notes for 21 January 2019 showed that Sirajul was only present at about 3.30pm.[140] This was a misapprehension of Dr Cheok's notes. In fact, Dr Cheok had clearly recorded in his notes that the interview commenced at 2pm, with Sirajul present as interpreter;[141] and that at 3.30pm on the same day, he had spoken via telephone with the accused's mother in Bangladesh, again with Sirajul present as interpreter.[142]

83 As for the second interview on 25 January 2019, the CAMS tracking report showed that Sirajul had arrived at 10.12am, slightly ahead of Dr Cheok who had arrived at 10.18am; and both of them had left at 10.53am.[143] Again,

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139 Transcript of 28 September 2020, p 8 line 31 to p 10 line 22.

140 DCS, para 29.

141 3AB144, under "Telephone No / Contact Person" and "Date of Clerking".

142 3AB158.

143 Transcript of 25 September 2020, p 118 lines 23–30.

therefore, the CAMS tracking report supported Dr Cheok's assertion that Sirajul was present for the entire interview. This was confirmed by Sirajul himself.[144]

84 As for the third interview on 28 January 2019, the CAMS tracking report showed that Dr Cheok had arrived at 2.13pm and left at 2.43pm, while Sirajul had arrived at 2.29pm and left at 2.43pm.[145] Dr Cheok testified that the third interview would typically be shorter than the preceding two because by then, most of the information required for the psychiatric assessment would have been obtained.[146] Dr Cheok denied that he had merely asked the accused about his sleep without asking any case-related questions. This was borne out by his interview notes, as these notes documented certain case-related information that Dr Cheok could not have known without asking the accused (for example, the fact that Yati had met Hanifa on Facebook).[147]

85 Dr Cheok further denied having had the accused's investigative statements during the interviews. He produced in court the only summary of facts he had been provided with by the police prior to interviewing the accused.[148] This was a very brief document which mentioned five things: the discovery of Yati's corpse in the Room; Yati's and the accused's brief personal particulars; the existence of a "romantic relationship" between them; the certified cause of Yati's death; and the fact that the accused had been charged for the offence of murder. I accepted Dr Cheok's evidence. If the police had in fact provided him with the accused's investigative statements, it made no sense

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144 Transcript of 28 September 2020, p 11 line 17 to p 13 line 18.

145 Transcript of 28 September 2020, p 14 lines 7–22.

146 Transcript of 25 September 2020, p 121 lines 24–28.

147 3AB164.

148 Exhibit P133.

for them to give him concurrently the brief summary of facts: such a document would have been superfluous if Dr Cheok already had the investigative statements in hand. In any event, if Dr Cheok really had been given the investigative statements by the police prior to his interviews with the accused, I did not see (and the Defence was unable to suggest) any reason why he should have felt it necessary to lie about it.

86 For the reasons set out in [81]–[85], I rejected the Defence's submission that it was unsafe to rely on Dr Cheok's interview notes.

87 Dr Cheok's interview notes were relevant because, *inter alia*, they established that the accused had narrated to Dr Cheok a version of events largely similar to the version narrated in his investigative statements. In particular, the accused had told Dr Cheok about his "plan" to bring Yati to the Hotel and to kill her if she refused to remain in the relationship with him until he returned to Bangladesh. As with the accused's investigative statements, therefore, Dr Cheok's interview notes supported the Prosecution's contention that the accused's killing of Yati was carried out in accordance with a premeditated plan.

88 Dr Cheok's interview notes were also relevant to the determination of another important issue: namely, whether Yati had in fact spoken the Humiliating Words to the accused in the Room on 30 December 2018. I next address this issue.

Whether the alleged Humiliating Words were in fact spoken by Yati to the accused in the Room on 30 December 2018

89 As I noted earlier at [51], the accused's contention that he had killed Yati completely on impulse and not in accordance with any premeditated plan rested on two key factual propositions. The first was that he had never told the

police – or Dr Cheok – about a decision or a plan to kill Yati. The second was that Yati had spoken the Humiliating Words to him in the Room on 30 December 2018. I have explained why I rejected the first proposition. I will now explain why I also rejected the second proposition.

90 To recap: in its closing submissions, the Defence identified the following as the Humiliating Words:[149]

> … he [*ie,* Hanifa] is better than you. He is better than you in the hotel … he is better in bed … he is better financially. If you don't believe … next week I will go with him, will make a video and show you.

91 According to the accused, the Humiliating Words were the trigger for his actions in strangling Yati to death: when he heard her say these words, he "went crazy", he "lost control", his "mind [was] blank", "he had the thought to kill her"[150] – and that was precisely what he did.

92 Given the momentous impact which the Humiliating Words had on the accused, one would have expected him to mention Yati's utterance of these words to the police and/or to Dr Cheok when he was interviewed by them. Yet, as the accused himself admitted, he said nothing at all about the Humiliating Words to the police and to Dr Cheok. It was not disputed that the first time he brought up Yati's alleged utterance of the Humiliating Words was at his interview with Dr Ung on 19 May 2020[151] – some 17 months after the killing of Yati. The accused's failure to make any mention of the Humiliating Words to the police and/or to Dr Cheok in the weeks following the killing struck me as

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149 DCS, para 34; 3AB6.

150 3AB6; 3AB21; 3AB23.

151 3AB21.

being highly anomalous, and ultimately, fatal to his credibility, particularly since he was unable to provide any coherent explanation for the omissions.

93 In so far as his statements to the police were concerned, the accused came up with a few different answers when asked why he had not mentioned the Humiliating Words in any of these statements. In respect of his cautioned statement,[152] the accused claimed that the recording officer (ASP Lee Tien Huat Chris, "ASP Lee") had told him that he was "stupid" to have killed "the girl" (*ie*, Yati), and that now his "life go away".[153] The accused thought that in saying this, ASP Lee "was feeling bad for [him] because [he] was going to die"; and that since he was "going to die", he would not mention the Humiliating Words in giving his cautioned statement.[154] Secondly, he thought that ASP Lee "might get annoyed, angry" if he mentioned "all these things", so he decided to "be precise" and "say whatever [he] wanted to say" in "a shortcut way".[155]

94 I found the accused's explanations *vis-à-vis* his cautioned statement glib and lacking in credibility. The accused himself had described ASP Lee as having spoken to him in a "very kind" and "nice" manner during the statement-recording.[156] It seemed to me quite unbelievable that the "kind" and "nice" ASP Lee should have taken it upon himself to admonish and alarm the accused by telling him that he was "stupid" and that his life would "go away". Furthermore, there was simply no reason for ASP Lee to admonish and alarm the accused in this manner: he had no connection with the case other than having

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152 2AB945.

153 Transcript of 23 September 2020, p 35 line 9 to p 36 line 28.

154 Transcript of 23 September 2020, p 36 line 27 to p 37 line 18.

155 Transcript of 23 September 2020, p 37 lines 14–18.

156 Transcript of 22 September 2020, p 8 line 12 and p 9 line 26; transcript of 23 September 2020, p 29 line 18 to p 30 line 13.

been requested to record the cautioned statement from the accused, and he was not aware of the details of the case – not even that a rope had been used.[157] Defence counsel himself put it to ASP Lee that it was not his job to elicit more details from the accused during the recording of the cautioned statement: his job was just to record whatever the accused said to him.[158] In the circumstances, it would have made no sense for ASP Lee to make any comments to the accused about his actions.

95 In any event, even assuming that ASP Lee had somehow taken it upon himself to tell the accused that he was "stupid" and that his life would "go away", there was no logical connection between these comments and the accused's alleged decision to refrain from mentioning the Humiliating Words in his cautioned statement. When the accused was asked to explain what one had to do with the other, he could not provide any explanation and ended up merely repeating, "I was going to die".[159] I should add that it did not appear to me the accused meant by this statement that he had fatalistically decided it was futile to say anything of importance in his cautioned statement. Indeed, despite having allegedly concluded that he "was going to die", he had still found it necessary to state in his cautioned statement that he had proof of Yati having had "another relationship with another guy", that he had "spent a lot of money on her" and that she had "cheated" on him.[160]

96 As for the accused's claims about having been afraid to anger ASP Lee by saying too much, this appeared to me to be just as unbelievable as his claim

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157 Transcript of 16 September 2020, p 92 lines 7–10 and 16–23.

158 Transcript of 16 September 2020, p 98 lines 17–21; p 99 lines 4–5.

159 Transcript of 23 September 2020, p 37 lines 9–14; p 38 lines 22–23.

160 2AB945.

about ASP Lee calling him "stupid". As noted above, Defence counsel had put it to ASP Lee that his job was simply to record whatever the accused said: it was not put to ASP Lee that he had tried to cut the accused off in the course of his narrative. Not was it put to ASP Lee that he had given the accused the impression he was required to give his cautioned statement in a "shortcut way". There was no reason, therefore, why the accused should have felt apprehensive about mentioning details such as the Humiliating Words. Indeed the contents of the accused's cautioned statement disproved his allegations about having been afraid to say too much. As noted above, the accused had sought to explain the killing of Yati by saying that he had done it "out of anger, because [he had] proof that she ha[d] another relationship with another guy" and she had "cheated" on him after he had "spent a lot of money on her". He had also given details of how he strangled Yati first with a towel and then with a rope. It did not appear to me that he felt in any way constrained in what he could say or how much he could say.

97 For the reasons set out in [94]–[96], I rejected the accused's explanations for why he omitted to mention the Humiliating Words in his cautioned statement.

98 In respect of his investigative statements, the accused said he had two reasons why he did not mention the Humiliating Words to ASP Teo.[161] First, he claimed that he did not mention the Humiliating Words to ASP Teo "because she was a lady" (to which he subsequently added, "[s]he looked like my girlfriend"); and he felt that it would not be nice to say such things to a lady.[162] Second, the accused claimed that he did not mention the Humiliating Words

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161 Transcript ot 23 September 2020, p 57 lines 7–19.

162 Transcript of 23 September 2020, p 57 lines 20–29.

because he "was going to die":[163] according to him, although he had thought at one point of telling ASP Teo about the Humiliating Words when she asked him why he had killed Yati, he decided against it because[164] –

> … I will die soon, what's the point?

99 As with his reasons for not telling ASP Lee about the Humiliating Words, the accused's stated reasons for not mentioning those words to ASP Teo also rang false. First, I found it unbelievable that he was so fearful of offending a "lady" like ASP Teo that he could not bring himself to repeat the words. After all, in recounting to ASP Teo the events of 30 December 2018, he had already told her about having sex with Yati twice in the Room, about their remaining naked in the Room even as they continued to quarrel over Yati's relationship with Hanifa,[165] and about Yati telling him after sex that "she was a prostitute" and asking him "how much [he] could pay her".[166] Given that he had felt able to mention all these things to ASP Teo without worrying about her taking offence, it was highly improbable that he would have suddenly developed concerns about her getting offended at hearing the Humiliating Words.

100 Second, I found it equally unbelievable that the accused refrained from mentioning the Humiliating Words because he thought he would "die soon". When he was asked to clarify why such a thought would have inhibited him from mentioning those words, his explanations were illogical and incongruous. At one point in cross-examination, as noted earlier, he himself had said, "I decided not to [mention the Humiliating Words] because I will die soon, what's

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163 Transcript of 23 September 2020, p 56 lines 1–17 and p 57 lines 18–19.

164 Transcript of 23 September 2020, p 56 lines 16–17.

165 2AB981, para 22.

166 2AB993–, para 73.

the point".[167] He was asked whether this meant he had decided not to bring up the "hurtful" words because he saw no point in giving more facts or more particulars. He demurred.[168] When he was asked to clarify what he had meant, he was unable to do so. Instead, he asserted that he "didn't say much about what [his] girlfriend said to [him] or did to [him]".[169] However, looking at the contents of his investigative statements, this assertion was simply untrue. Far from having exercised restraint in disclosing what Yati had said or done to him, he had provided a copious amount of information about Yati's behaviour towards him which included the rude or harsh things she had said and done to him. For example, he said that he had "spent a lot of money on her" and had bought her things such as a pre-paid phone card.[170] He also volunteered details of how she had taken money from him: when she needed money to build a house in Indonesia, she had asked him to cancel his home leave and to give her money; and he had done so by helping her pay off a loan at the rate of $283 per month over a five-month period.[171] As noted earlier, he had mentioned her telling him after sex on 30 December 2018 that "she was a prostitute" and asking him how much he could pay her. He had also mentioned her telling him to "leave her alone" and reneging on her earlier promise not to take another boyfriend by saying that "this was depending on her mind and luck".[172] In short, contrary to the accused's claims, his statements to the police revealed that he had much to say about what Yati had said and done to him.

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167 Transcript of 23 September 2020, p 56 lines 15–17.

168 Transcript of 23 September 2020, p 62 line 15 to p 63 line 30.

169 Transcript of 23 September 2020, p 64 lines 1–10.

170 2AB986, para 39.

171 2AB979, para 15.

172 2AB981, para 22; 2AB989, para 53.

101 For the reasons set out in [99]–[100], I rejected the accused's explanations as to why he omitted to mention the Humiliating Words in his investigative statements.

102 In respect of his interviews with Dr Cheok, the accused initially claimed that he did not say anything about the Humiliating Words because he had been told that Dr Cheok was a "doctor for [his] head":[173]

> He was going to check my head. I didn't want to tell him all those words because it was my understanding what will those words help him. In Bangladesh also, we don't tell doctors so many things.

103 I did not believe the above explanation. First, Dr Cheok testified that he had explained to the accused the purpose of the interviews; in particular, the fact that he was a staff from the IMH, that he had been directed by the court to conduct a psychiatric assessment (and not a "medical physical examination"), and that his report would be tendered to the court.[174] Dr Cheok was clear that it was standard practice for such information to be given to an accused person who was the subject of a court-mandated psychiatric assessment.[175] I did not think, therefore, that the accused could have been unaware of the reason why Dr Cheok was interviewing him.

104 Indeed, as the Prosecution pointed out in cross-examination, it was apparent from Dr Cheok's interview notes that he had specifically asked the accused, "Please help me understand why you killed her".[176] Tellingly, when this line in Dr Cheok's interview notes was highlighted to the accused, he

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173 Transcript of 23 September 2020, p 68 lines 29–32.

174 Transcript of 25 September 2020, p 117 line 7 to p 118 line 1.

175 Transcript of 25 September 2020, p 116 line 28 to p 117 line 4.

176 Transcript of 23 September 2020, p 67 lines 28–32; 3AB160.

replied evasively at first that Dr Cheok had asked only "[h]alf the question".[177] When pressed, he conceded that Dr Cheok had asked, "Why did you kill the girl?"[178] When asked again why he had failed to tell Dr Cheok about the Humiliating Words which had (according to him) led to his strangling Yati, he could provide no coherent explanation and merely asserted that he had "decided not to say those words … [he] didn't want to say those words to the doctor".[179] Yet, once again, this assertion was plainly unbelievable because Dr Cheok's interview notes showed that the accused had – in answer to the question about why he had killed Yati – articulated a number of reasons. Thus for example he had said:[180]

> Because she does not talk to me nicely
>
> Whenever I call her she was harsh with me
>
> If she spoke to me nicely, if I go my way you go your way I may decide not to kill her
>
> I told her to tell your boyfriend not to call you for 1 month after I am married
>
> You are free to mix with him

105 Considering that he had been prepared to tell Dr Cheok he killed Yati because, *inter alia*, she did not talk to him "nicely" and was harsh with him, there was no reason why the accused should have decided to refrain from mentioning the Humiliating Words allegedly uttered by Yati on 30 December 2018. When he was pressed further, he simply retreated to the bare statement that he had "decided not to tell" Dr Cheok[181] – which was no answer at all.

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177 Transcript of 23 September 2020, p 68 lines 3–4.

178 Transcript of 23 September 2020, p 68 lines 7–13.

179 Transcript of 23 September 2020, p 70 lines 15–27.

180 3AB160.

181 Transcript of 23 September 2020, p 74 lines 21–24.

106 For the reasons set out in [103]–[105], I rejected the accused's explanations as to why he omitted to mention the Humiliating Words in his interviews with Dr Cheok.

107 To sum up, therefore: given the significance of the Humiliating Words in relation to the accused's actions in killing Yati, one would have expected him to mention this when he was interviewed by the police and Dr Cheok. This was all the more so when he had taken the trouble to provide both the police and Dr Cheok with details of various things said and done by Yati in the Room on 30 December 2018. As noted above, none of the accused's explanations for his failure to mention the Humiliating Words could be believed. In my view, the accused's account of these Humiliating Words to Dr Ung some 17 months after Yati's death – and subsequently at trial – was yet another story he had made up. Pertinently, Dr Ung agreed at trial that in criminal cases of this nature, there would be "the motivation to falsify, distort or exaggerate facts to avoid punishment"; and that the "lapse of time" after the killing "would have given [the accused] more time to think up and come up with such falsehoods, distortions and exaggerations".[182] With respect, this was in my view precisely what the accused had done. It was clear that having killed Yati in accordance with his premeditated plan, he later decided to find some way of avoiding or minimising responsibility for the killing. To do so, he had to, *inter alia*, rebut any inference of premeditation or pre-planning; and this was why, more than a year thereafter, he came up with the story of the Humiliating Words (in addition to the other falsehoods I have earlier addressed – see [52]–[70], [72]–[78] and [80]–[86]).

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182 Transcript of 25 September 2020, p 36 line 30 to p 37 line 6.

108 To recap: the accused's claim about the alleged utterance of the Humiliating Words by Yati was an important part of the narrative of the killing which he presented to Dr Ung and at trial – his narrative being one of an "impulsive" killing, committed in the spur of the moment, and without any premeditation or planning. Clearly, the alleged utterance of these Humiliating Words was central to the two partial defences which the accused invoked: that of diminished responsibility (Exception 7 to s 300 of the Penal Code) (Cap 224, 2008 Rev Ed) ("PC")), and that of grave and sudden provocation (Exception 1 to s 300 of the PC. I next address in turn the accused's reliance on each of these partial defences.

Whether the partial defence of diminished responsibility was made out by the accused

The applicable test

109 Exception 7 to s 300 of the PC provides as follows:

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

110 This partial defence has been considered by the Court of Appeal ("CA") on a number of occasions. In *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") (cited by the CA in several subsequent cases including *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*")), the CA explained:

> 79 There are three distinct requirements under Exception 7 which must be satisfied before an accused is entitled to rely on

> it (see the decisions of this court in *Ong Pang Siew* at [58] and *PP v Wang Zhijian* [2014] SGCA 58 ('*Wang Zhijian*') at [50]):
>
> > (a) The accused was suffering from an abnormality of mind ('the first limb').
> >
> > (b) Such abnormality of mind ('the second limb'):
> >
> > > (i) arose from a condition of arrested or retarded development;
> > >
> > > (ii) arose from any inherent causes; or
> > >
> > > (iii) was induced by disease or injury.
> >
> > (c) The abnormality of mind substantially impaired his mental responsibility for his acts and omissions in causing the death ('the third limb').
>
> 80 It is further well established that whilst the second limb (otherwise known as the aetiology or root cause of the abnormality) is a matter largely to be determined based on expert evidence, the first and third limbs are matters which cannot be the subject of any medical opinion and must be left to the determination of the trial judge as the finder of fact …

111 In respect of the first limb, the CA in both *Iskandar* (at [81]) and in *Nagaenthran* (at [23]) adopted the definition articulated by Lord Parker CJ in delivering the judgment of the English Court of Criminal Appeal in *Regina v Byrne* [1960] 2 QB 396 (at 403):

> 'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment. The expression 'mental responsibility for his acts' points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts. [emphasis in original omitted]

112 In respect of the second limb, the CA in *Nagaenthran* noted (at [30]–[31] that the words in parentheses in Exception 7 were to be read in a restrictive

sense, in that Exception 7 was intended to cover offenders who suffered from a "recognised and proven psychiatric condition". It was not intended to apply to offenders suffering from transient or even self-induced illnesses that had no firm basis in an established psychiatric condition that arose from a condition of arrested or retarded development of mind or any inherent causes or was induced by disease or injury.

113 In respect of the third limb, the CA in *Nagaenthran* also explained (at [33]) how this was to be established:

> At its heart, the third limb … is concerned with the connection between the offender's abnormality of mind and his mental responsibility for his acts or omissions in relation to the offence … [T]he offender's abnormality of mind [must] be of such an extent as to have substantially impaired his mental responsibility for his acts or omissions in relation to the offence … [W]hat in fact amounts to a substantial impairment of mental responsibility is largely a question of commonsense to be decided by the trial judge as the finder of fact. It is especially the case in this context that while medical evidence would be important in determining the presence and/or extent of impairment, whether an accused's mental responsibility was substantially impaired is ultimately a question of fact that is to be decided by the court based on all the evidence before it … Substantial impairment in this context does not require total impairment; but nor would trivial or minimal impairment suffice. What is required is an impairment of the mental state that is real and material but which need not rise to the level of amounting to the defence of unsoundness of mind under s 84 of the Penal Code … Further, the requirement of substantial impairment does not entail that the offender's abnormality of mind must be the *cause* of his offending. Instead, the question is whether the abnormality of mind had an *influence* on the offender's actions … [emphasis in original]

The three limbs of Exception 7 are cumulative requirements; and the accused who relies on Exception 7 bears the burden of establishing all three limbs on a balance of probabilities: *Nagaenthran* at [21].

Applying the test to the facts of the present case

The first and second limbs

114 In the present case, both the Prosecution and the Defence agreed that the first and second limbs were satisfied.[183] In respect of the first limb, the Prosecution's expert witness Dr Cheok and the Defence expert Dr Ung were agreed that the accused suffered from an abnormality of mind – namely, AD. Both doctors agreed that the criteria for AD were as follows (taken from the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (2013, 5th Ed) at p 286):[184]

> A. The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s).
>
> B. These symptoms or behaviors are clinically significant, as evidenced by one or both of the following:
>
> *1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.*
>
> 2. Significant impairment in social, occupational, or other important areas of functioning.
>
> [emphasis added]

115 Both doctors were agreed that the stressor in the accused's case was his relationship with Yati. Both were agreed that the "clinically significant" symptom listed under paragraph B(1) (above, in italics) was present, whereas the symptom listed under paragraph B(2) was not. In Dr Cheok's words (per his report dated 11 August 2020):[185]

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183 PCS, paras 67–68.

184 3AB27.

185 3AB120, para 3a.

> [The accused] suffered from adjustment disorder after finding out that Yati was seeing another man and wanted to breakup the relationship with [the accused]. As a result, [the accused] became depressed, jealous, angry and anxious … Despite his symptoms, [the accused] was able to work, concentrate at his work, organize his life as well as remained interested in biological activities such as sex which is typically diminished in serious mental disorders.

116 There are two points I should deal with here. First, Dr Cheok stated in his report of 11 August 2020 (at paragraph 3a) that "AD is considered a subthreshold diagnosis and does not reach the severity of serious mental illness such as major depressive disorder". On the other hand, whilst Dr Ung conceded that "the diagnosis of an Adjustment Disorder is made when a subject does not meet the full criterion of a Major Depression", he opined that "empirical data suggests that it may be as disabling as Major Depression and may have a significant impact on behaviour".[186] In support of his opinion, Dr Ung cited data which according to him showed that AD "was the psychiatric diagnosis found in 23 of 278 (8.3%) homicide defendants in a North American sample, and Acute Stress Reactions and [AD][187] was diagnosed in 2 of 110 (1.8%) individuals charged with murder between 1997 to 2001 in a local study".[188]

117 I considered the two doctors' opinions on the above issue to be really a difference in emphasis in the context of a *general* proposition. I did not consider it ultimately material to the key issue of whether the AD in *the present accused's* case caused "substantial impairment" of his mental responsibility for his killing of Yati.

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186 3AB11, para 29.

187 Dr Ung did not provide the breakdown as between cases of Acute Stress Reactions and cases of AD in this local study.

188 3AB11, para 30.

118 Second, Dr Cheok stated in cross-examination that he was prepared to accept that the accused's AD did cause "some" impairment of his mental state,[189] but disagreed that it caused "substantial impairment" of his mental responsibility for his acts in causing Yati's death. There was an attempt by Defence counsel to suggest that Dr Cheok's testimony that the AD had caused "some impairment" of the accused's mental state really amounted to conceding that the impairment to the accused's mental responsibility for the killing of Yati was "not trivial" – and thus "substantial".[190] With respect, the suggestion was misconceived. To begin with, it was hardly surprising that Dr Cheok should have opined that there was "some" impairment of the accused's state of mind arising from the AD. Had he found no impairment of the accused's state of mind at all, he would not have been able to arrive at his conclusion that the accused suffered from an abnormality of mind – since an absence of any impairment would have meant that the accused's mental state was no different from that of "ordinary human beings". Dr Cheok's evidence as to there having been "some" impairment of the accused's mental state arising from the AD thus meant nothing less and nothing more than what he had said. In any event, any suggestion that Dr Cheok's answer about "some" impairment of the accused's mental state amounted to a concession that there was impairment of his mental responsibility for the killing which was "not trivial" would invest the doctor's testimony with a significance or weight that was entirely misplaced. As the CA has been at pains to point out in cases such as *Nagaenthran* (at [33]) and *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 ("*Ong Pang Siew*") (at [64]), in the context of Exception 7, the assessment of whether there has been impairment of the accused's mental responsibility which was "real and

189 Transcript of 25 September 2020, p 138 lines 3–14.

190 Transcript of 25 September 2020, p 136 line 24 to p 138 line 19.

material" – as opposed to being "trivial" or "minimal" – is largely a question of commonsense to be decided by the trial court as the finder of fact. While medical evidence would be important in determining the presence and/or extent of impairment, whether an accused's mental responsibility was substantially impaired is ultimately a question of fact to be decided by the court based on all the evidence before it: that is, not only the medical evidence but also all other relevant facts and circumstances of the case, including the conduct of the accused before, during and after the offence (*Nagaenthran* at [33]; *Ong Pang Siew* at [59]–[60] and [64]).

119 In respect of the second limb, both doctors were agreed that this too was satisfied in that AD was a recognised mental disorder or disease.

The third limb

120 In respect of the third limb of Exception 7, as the CA noted in *Public Prosecutor v Wang Zhijian and another appeal* [2014] SGCA 58 ("*Wang Zhijian*") at [67]:

> … [T]here are three usual ways in which a psychiatric condition might substantially impair a person's mental responsibility. The first is that it affects the person's 'perception of physical acts and matters'. The second is that it hinders the person's 'ability to form a rational judgment as to whether an act is right or wrong'. The third is that it undermines the person's 'ability to exercise will power to control physical acts in accordance with that rational judgment'. …

121 In the present case, it was not disputed that the accused's "perception of physical acts and matters" was not affected. He was completely cognisant of his actions. This was not, for example, a case of automatism.

122 It was also not disputed that the accused's AD did not hinder his judgment as to whether an act was right or wrong. He was fully aware that the

act of killing Yati was morally wrong as well as being a serious offence under Singapore law. In his cautioned statement, after admitting to having killed Yati "out of anger", he stated that he was "sorry" and would "accept whatever punishment".[191] In his investigative statement of 3 January 2019, he said that he knew that under Singapore law, if he killed someone, he would be hanged.[192]

123 Where the Prosecution and the Defence differed sharply was in respect of the third category of substantial impairment mentioned by the CA in *Wang Zhijian*: whether the accused's AD had undermined his ability to exercise will-power to control his physical acts in accordance with his judgment of what was right or wrong.

124 The Defence argued that the accused's ability to exercise such will-power and self-control was substantially impaired by his AD. In this connection, the Defence relied heavily on the opinion of Dr Ung who had stated in his report of 5 June 2020:[193]

> It is my opinion that [the accused's] Adjustment Disorder significantly contributed to his offence by making his emotions more labile (unstable) especially exacerbating his feelings of anger as well as reducing his self-control and impairing his judgment (leading to his making inappropriate choices). In this sense there is a 'causal link' between his disorder and his offending behaviour.

125 Whilst Dr Ung referred in his report to the accused's "judgment" being "impaired", it was clear from his testimony that he did not mean the accused's judgment of what was right or wrong had been impaired. Instead, he appeared to be referring to two separate matters. First, it will be recalled that the

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191 2AB945.

192 2AB986, para 39.

193 3AB17, para 40.

Prosecution's case was that the accused killed Yati in accordance with a plan which he had devised prior to 30 December 2018, in which he had decided that he would ask Yati to leave Hanifa and to remain in a relationship with him (the accused) until his return to Bangladesh – and he would refrain from killing her if she agreed to do so, but would kill her if she refused. This was what Dr Cheok had in his testimony referred to as the "algorithm" or "decision tree" formulated by the accused.[194] In this connection, Dr Ung's opinion was that had the accused not had AD, he would not have come up with such an "algorithm" or "decision tree":[195]

> … [I]f I asked myself, on the basis of probability, if he did not have any adjustment disorder, would he even be having that algorithm, you know, to kill somebody or not to kill somebody, in the normal run of the mill, I mean … rejections and … breakups are … a part of life, you know. They happen, I suppose, to most people, you know. And … people are able to go through the pain, you know, without resorting to any extreme behaviour. … So I would say that had he not ha[d] an adjustment disorder, then that decision tree wouldn't even come up, you know. It would be a … different decision tree, you know. 'What should I do …? Should I look for a new girl? Should I' – as what he had said, go ahead with his previous plan to marry an arranged bride, you know? Should he have no relationship for a while because it's too painful? So it would be a different decision tree. …

126 The second thing which Dr Ung apparently meant when he talked about the accused's "judgment" being impaired was that there was "increased impulsivity" which made it "harder" for the accused to "put a brake" on carrying his thoughts about killing Yati into action.[196] It must be pointed out, however, that this was simply another way of saying that the accused's self-control was impaired.

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194 Transcript of 18 September 2020, p 35 lines 14–29.

195 Transcript of 25 September 2020, p 23 lines 1–14.

196 Transcript of 25 September 2020, p 23 line 24 to p 24 line 7.

127 The Prosecution, in disagreeing with the Defence on the third limb, contended that far from there having been "substantial impairment" of the accused's mental responsibility for his actions, the killing of Yati was a deliberate act carried out in accordance with his premeditated plan. Aside from relying on Dr Cheok's evidence, the Prosecution also pointed to the evidence of the accused's conduct before, during and after the killing which, in their submission, demonstrated that his self-control remained intact throughout. According to the Prosecution, the evidence showed that "the accused demonstrated presence of mind and was able to rationally make decisions and act in a goal-directed manner before, during and after the killing". The accused's reasons for killing Yati also indicated that it "was a considered act of violence, motivated by a mixture of [his] pre-existing grievances against [Yati] and other instrumental reasons".[197]

128 I address first Dr Ung's proposition that the accused would not have come up with his "algorithm" or "decision tree" if not for his AD. I did not accept this proposition. My reasons were as follows. From his evidence-in-chief (as set out above), what Dr Ung appeared to be saying was this: deciding to kill one's faithless lover would be a poor decision (whether in terms of moral culpability or criminal liability) – *ergo*, only someone with AD would make such a poor decision, because a "normal" person would decide to take some other course of action (finding a new lover, avoiding romantic entanglements, *etc*) which would not carry the risk of such moral culpability or criminal liability. With respect, this proposition appeared to me to be really a value judgment, unsupported by any medical grounds or, for that matter, by any evidence. Indeed, in cross-examination, Dr Ung conceded that "a normal

197 PCS, para 77.

person with no psychiatric illness would also make poor choices and be more impulsive when they are emotional".[198]

129 Dr Ung's other proposition was that the accused's AD caused "increased impulsivity" which made it "harder" for him to "put a brake" on carrying the thoughts he had about killing Yati into action. As I observed earlier, this really amounted to saying the accused's self-control was impaired; and in re-examination, Dr Ung did in fact frame it as such. According to him, given a choice whether to "carry through" with killing Yati or not to "carry through", AD would "amplify the [accused's] negative emotions" with the following consequences:[199]

> So, you know, if anger was one of the predominant emotions, it would make him … so angry as to, I suppose, not be able to stop himself from going ahead … [T]he intensity of the AD would have peaked, you know, sort of when she finally tells him that … she doesn't want a relationship with him anymore and in fact has got another Bangladeshi boyfriend. So at that point we would expect a surge of negative emotions – anger, sadness, anxiety, anguish. That would compromise his cognitive processes … the ability to … inhibit certain behaviours, the ability to think clearly by looking at a variety of choices.

130 I did not accept Dr Ung's proposition that the accused's AD caused "increased impulsivity" and accordingly, lack of self-control on 30 December 2018. My reasons were as follows. In the first place, as seen from the above response Dr Ung gave in re-examination, this proposition was premised on the accused's ability to "inhibit certain behaviours" having been compromised by the "surge of negative emotions" he experienced on 30 December 2018 when he "finally" heard from Yati that she had a new Bangladeshi boyfriend and did not want a relationship with him anymore. However, this factual premise was

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198 Transcript of 25 September 2020, p 48 line 22 to p 49 line 11.

199 Transcript of 25 September 2020, p 107 line 11 to p 108 line 10.

not borne out – and was actually contradicted – by the accused's own evidence. According to the accused, he had already found out on 9 December 2018 that Yati had a new Bangladeshi boyfriend.[200] Yati even advised him to go back to Bangladesh to get married.[201] On 24 December 2018, Yati turned down the accused's proposal that she continue her relationship with him until he returned to Bangladesh in February 2019, and told him that "she would not continue the relationship with [him] even for a day".[202] Between 23 December 2018 and 30 December 2018, the accused and Yati quarrelled everyday about her new Bangladeshi boyfriend. He could not reach her on the telephone; and when he did manage to get her to call him, she told him that "everything was over": their relationship had ended on 23 December 2018, the day when she repaid him the last $500 she owed him and had sex with him "as per [his] request".[203] In the circumstances, there was no evidential basis for the proposition that the accused had suffered a "*surge* of negative emotions" [emphasis added] on "finally" learning on 30 December 2018 that Yati had a new boyfriend and did not wish to continue their relationship. Indeed, according to the Defence's submissions, it was the Humiliating Words from Yati that "specifically provoked" the accused and "were too much for [him] to bear".[204]

131 In so far as the Defence's case on diminished responsibility was premised on the accused having lost self-control when he heard the Humiliating Words from Yati, I have explained why I found his evidence about the Humiliating Words to be an afterthought and a fabrication (see [92]–[107]).

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200 2AB992, para 67.

201 2AB980, para 18.

202 2AB980, para 19.

203 2AB992–993, para 71.

204 DCS, paras 34–35.

132 I have also explained why I rejected the accused's attempt to disavow those portions of his investigative statements and Dr Cheok's interview notes in which he had spoken of deciding to kill Yati and coming up with a plan to kill her if she refused his demand to continue their relationship (see [55]–[69] and [81]–[85]). These statements by the accused showed that far from having strangled Yati on "impulse" upon hearing the Humiliating Words on 30 December 2018, the accused had – by 9 December 2018 – already formulated a clear "algorithm" for action, whereby he would demand that she continue their relationship until his return to Bangladesh – and proceed with killing her if she refused.[205] Indeed, even leaving aside his express affirmations of such a "decision" and "plan" in his investigative statements and in his interviews with Dr Cheok, the evidence of his conduct before and during the killing showed only too distinctly that he had a plan to put this "algorithm" into action and was fully capable of taking the steps necessary to execute this plan.

133 Thus, prior to meeting Yati on 30 December 2018, the accused had already determined on 9 December 2018 how and where he would kill her. As he explained in his statement of 4 January 2019, after learning of Yati's new Bangladeshi boyfriend on 9 December 2018 and resolving to kill her, he had settled on strangulation as the method of killing ("I knew that I could strangle her to death"), and on the rope from his jacket as his weapon of choice ("It was soft, tough, and easy … to keep … inside my pocket").[206] He had also settled on the Hotel as the place where he would carry out the killing ("I chose the hotel because I would not be able to strangle her in other locations").[207]

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205 2AB992, para 67; 3AB152.

206 2AB992, para 67.

207 2AB992, para 67.

134 On 23 December 2018, the accused brought the rope with him to the Hotel but did not use it on Yati because she agreed to continue to meet him and assured him that she did not meet Hanifa. On the evening of the same day, however, she told him to go back to Bangladesh to get married and spoke about Hanifa again. He persuaded her to meet him on the following Sunday – which was 30 December 2018. They went to the Hotel again on that day – and that was when and where he strangled her to death.

135 From the above sequence of events and the accused's conduct between 9 December 2018 and 30 December 2018, it was clear that the accused was capable not only of formulating a step-by-step plan for killing Yati (where, how, when and under what conditions) but also of following that plan and executing it only when the requisite conditions were met (when they were at the Hotel and after she refused his demand to continue their relationship). This was demonstrably rational, goal-directed behaviour which would have required a certain measure of self-control.

136 Indeed, it must be highlighted that even before 30 December 2018, Yati had already caused much anguish to the accused when she met him in person on the night of 9 December 2018. Not only had she failed to answer his calls that day, she had accused him of "disturbing" her" and had even talked to someone at her employer's residence about calling for the police. When she finally agreed to meet him at the void deck of her employer's residence, she had "expressed her anger" by scolding him ("she told me that I act like mad"). On that occasion, the accused would no doubt have experienced a considerable amount of emotional upheaval, especially since it was "the first time she was talking like this".[208] As he himself put it, he was "suspicious and was very

[208] 2AB980, para 17.

angry". Yet, notably, the accused committed no acts of violence against Yati that day. Instead, it was upon her confirming to him that very same night the existence of a new Bangladeshi boyfriend that he came up with the step-by-step plan to kill her ("I looked around and found the rope … I chose the hotel … I had a plan to question her to see if she agreed with me or not. I wanted her to promise me to break up with her boyfriend. If she listened to me and broke up the relationship, I would not kill her."[209]). In other words, the accused kept his emotions sufficiently in check on 9 December 2018 to refrain from any violent reaction to the aggravation from Yati; he started formulating his plan to kill her only after receiving confirmation of her new boyfriend Hanifa; and even then, he did not rush into action despite ongoing quarrels with Yati about Hanifa between 23 December 2018 and 30 December 2018, but kept to the algorithm he had formulated, killing her only on 30 December 2018 when she refused his demand to continue their relationship. In my view, this was assuredly not the behaviour of a man whose self-control was hostage to his "fluctuating"[210] emotions of anger, jealousy and anxiety.

137 The accused's actions in the Room on 30 December 2018 provided further evidence of his ability to exercise will-power and self-control. From the accused's own narrative, throughout the time they were in the Room up until the moment of her death, Yati persisted in rejecting his *repeated* demands for her to continue their relationship until his departure for Bangladesh and to leave Hanifa. Yet the accused did not immediately strangle her the first time she rejected his demand. Per his investigative statements,[211] prior to strangling Yati to death, he "rounded" the towel around Yati's neck and threatened to kill her

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209 2AB992, para 67.

210 Per Dr Ung in re-examination: transcript of 25 September 2020, p 108 lines 2–10.

211 2AB993–994, paras 73–75.

twice. Each time she defied him by refusing his demand that she break up with Hanifa. He did not strangle her on these first two occasions. In between, he had sex with her again; he sent Hanifa a text message; and he even offered to let her strangle him. It was only on the third occasion of "rounding" the towel around her neck – after all his various pleas and stratagems had failed to move her – that he finally tightened the towel and strangled her to death. Crucially, even on this third occasion, he was still able to assess the situation he was in and to weigh up his options: in both his 3 January 2019 statement and his 4 January 2019 statement, he said he "realised" as he was tightening the towel on the third occasion that "if [he] left her in this circumstance, she would call for police".[212] This revelation was telling, because it showed that even at the point of tightening the towel around Yati's neck (on the third occasion that he had "rounded" the towel around her neck), the accused was still capable of looking at his situation from an instrumental perspective. Again, this was not the behaviour of a man whose will-power and self-control were overwhelmed by the "surge of negative emotions".

138 The accused's actions after the act of strangulation with the towel showed the same signs of deliberation and purposefulness. After this first act of strangulation, he carried out several further acts which were designed to "make sure that [Yati] was dead":[213] he retrieved from his back pocket the rope he had brought with him, wound and knotted this around Yati's neck, and strangled her a second time; and he also used a towel to press down hard on her mouth and nose before twisting her head forcefully from left to right.

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212 2AB983, para 27; 2AB995, para 77.

213 2AB999, para 90.

139 In considering the evidence of the accused's actions *after* the killing of Yati, I had to bear in mind the fact that some of the actions relied on by the Prosecution were carried out not in the immediate aftermath of Yati's death, but after some time had elapsed – for example, his actions in removing Yati's valuables (cash, an ez-link card and her handphone) before leaving the Room, and instructing Khalik to remit money to his family in Bangladesh. In my view, care had to be taken not to give undue weight to actions carried out by the accused after some time had already elapsed from the killing of Yati. It could be argued that they provided no guide to the state of impairment of his mental responsibility for the killing, simply because enough time had passed for him to curb his emotions and regain self-control.

140 In my view, in any event, the evidence of the accused's actions *before* and *during* the killing of Yati already sufficed to establish that his will-power and self-control were unimpaired. I did not think this was a case where the evidence of the accused's actions *after* the killing of Yati was crucial in tilting the balance. What I did note, though, was that nothing in the evidence of his post-killing conduct militated against the inference that his will-power and self-control were unimpaired. This included the evidence of how the accused had put Yati's clothes back on her body after killing her, because he "did not want anyone else to see her naked"; how he placed her body in a sleeping position on her left side facing the window because he "wanted to know if she would change her position" if he left the room and came back;[214] how he extended the room rental by another two hours and haggled over the price with the hotel staff; and

[214] 2AB995–996, para 81.

how he returned to the Room to check the position of Yati's body[215] and "confirm if she was dead".[216]

141 Interestingly, when cross-examined, Dr Ung said he agreed that in respect of his actions before and after the act of killing Yati, the accused "showed a presence of mind and ability to think and make choices".[217] However, he attempted to caveat his concession by asserting that the "presentation" of the accused's symptoms "would be very variable":[218] whilst the impairment to the accused's mental state would have been "minimal" both before and after the killing, the "key critical time" one should focus on in examining the accused's impairment was "that particular point in time when he was rejected".[219]

142 With respect, Dr Ung's position appeared to me to be untenable. In the first place, his suggestion that the substantial impairment to the accused's mental state would have occurred "at that particular point in time when he was rejected" appeared to assume that there was only one particular "rejection" suffered by the accused on 30 December 2018 – whereas, as seen from above (at [137]), Yati rejected the accused's demands for her to continue their relationship several times in the course of their interaction in the Room on 30 December 2018. In the second place, Dr Ung's approach really constituted an attempt to "compartmentalise [the accused's] mental responsibility *during* the time of the offence into split-second journeys of rational thinking and

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215 2AB996, paras 81–82.

216 2AB983, para 30.

217 Transcript of 25 September 2020, p 80 lines 27–28.

218 Transcript of 25 September 2020, p 80 line 24.

219 Transcript of 25 September 2020, p 81 lines 1–3.

substantial impairment" [emphasis in original] – which was exactly what the CA cautioned against in *Zailani bin Ahmad v Public Prosecutor* [2005] 1 SLR(R) 356 ("*Zailani*") at [64]. As the CA in *Zailani* put it, this attempt at "split-second compartmentalisation" made for "an artificial and convenient excuse rather than the truth". Indeed, with respect, Dr Ung did not provide any grounds for his proposition that it was possible for the accused's symptoms to "fluctuate" on a virtually split-second basis.

143 To sum up, therefore: in so far as the Defence sought to suggest (relying on Dr Ung's testimony) that only a person with AD would have developed the sort of "algorithm" the accused did, I have explained why I found this suggestion to be baseless and misconceived. In so far as the Defence contended (again relying on Dr Ung's evidence) that "increased impulsivity" from the accused's AD impaired his will-power to resist killing Yati, I have also explained why I found this contention wholly refuted by the evidence available.

144 In the course of cross-examining Dr Cheok, the Defence also sought to suggest that the accused was actually suicidal and had engaged in a "suicide attempt" on 30 December 2018.[220] In his investigative statement of 3 January 2019, the accused said when he decided on 9 December 2018 to kill Yati, he had also decided that after he killed her, he "[would] end [his] life too".[221] In the same statement, he also said he knew that under Singapore law, he would be hanged if he killed someone; and since he had killed Yati, he believed he would be hanged.[222] The Defence suggested that this meant the accused "knew that when he killed [Yati], he would be caught, he would be charged, he would

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220 Transcript of 18 September 2020, p 57 lines 9–13; p 75 line 24 to p 76 line 10.

221 2AB981, para 20.

222 2AB986, para 39.

be [hanged]"; and that "[killing] her knowing that that [was] going to end his life as well … was a suicide attempt".[223]

145 It was not clearly explained in the Defence's closing submissions why proof of a "suicide attempt" by the accused was relevant to his defence of diminished responsibility. From counsel's cross-examination of Dr Cheok, the Defence appeared to be suggesting that the accused's AD put him at increased risk of suicide (or suicide attempt) because persons with AD "want to put an end to their distress"; and that this was in fact what the accused had sought to achieve by killing Yati: he wanted to end his "suffering" by ending his life – and he would achieve this by getting caught, getting charged and getting hanged for causing Yati's death.[224]

146 With respect, I found the above contention to be without any basis or merit. The suggestion that the accused had engaged in a suicide attempt because he knew "he would be caught, he would be charged, he would be [hanged]" was based on the crucial assumption that the accused had intended to be caught and prosecuted for the killing of Yati: the Defence relied *inter alia* on his statement to Dr Cheok that "[h]e would surrender to police and he thought his life was meaningless without her"[225] and on his statement to his dormitory roommate Shak Rasel that he "ended everything, [he] killed [his] girlfriend".[226] However, as with any of the statements made by the accused (whether to the police or to the psychiatrists), such statements had to be evaluated against the other evidence of the accused's actual behaviour; and when so evaluated, it was obvious that

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223 Transcript of 18 September 2020, p 57 lines 9–13.

224 Transcript of 18 September 2020, p 57 lines 23–31.

225 3AB152.

226 DCS, para 82; 2AB933, para 6 and footnote 1.

far from having intended to "surrender to [the] police" and to accept punishment for his killing of Yati, the accused made concerted efforts to evade capture in the aftermath of the killing. It will be recalled that in his investigative statements, the accused had said more than once that he realised in the course of tightening the towel around Yati's neck that he could not leave her like that because she would call the police (see [137] above).[227] That he committed – indisputably – several successive acts of violence on Yati (strangling her twice, pressing on her mouth and nose, and twisting her head from side to side) bore testimony to his determination to stop her – permanently – from going to the police. Although he said he "believed" he would be hanged for the killing and that he was "prepared to face the judgment",[228] his behaviour post-killing was that of a man seeking to evade judgment rather than to face it. Whilst he claimed at one point that he "did not surrender immediately as [he] wanted to buy some time to communicate with [his] family in Bangladesh",[229] this did not explain why he remained at large right up to the point of his forcible arrest on 31 December 2018. On his own evidence, he did not remain in his dormitory after asking Khalik to remit money to his family in Bangladesh but checked into a different hotel in Geylang, checked out after a few hours, walked around, and took a bus to Boon Lay.[230] If he had indeed "given up on life" and was simply expecting "to be arrested and put through this whole process",[231] why should he have left the Dormitory and changed his location multiple times within the space of several hours? The only logical explanation for his behaviour must be that he was trying to evade detection and capture by the police.

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227 2AB983, para 27; 2AB994, para 75.

228 2AB986, para 39.

229 2AB986, para 38.

230 Transcript of 24 September 2020, p 59 line 8 to p 60 line 7.

231 Transcript of 18 September 2020, p 77 line 26 to p 78 line 20.

147 The accused's other claim – that he wanted to "meet [his] boss" to "tell him everything and … to tell [his boss] to call the police and give [him] up to the police"[232] – was also completely at odds with the objective evidence. For one, it was not disputed that Ferh's quality control supervisor Muhammad Hazwan bin Daud ("Hazwan") had tried unsuccessfully to call the accused a few times on 30 December 2018, to find out why he had not reported for work that morning.[233] Had the accused truly been anxious to speak to his superiors, therefore, he could easily have called Hazwan – who was his supervisor – and arranged to meet him to "tell … everything". He did not contact Hazwan. He chose instead to text Zoe, who was so unfamiliar with him that she did not recognise his phone number and had to ask him to identify himself.[234] In fact, Ferh's owner Fadhillah gave evidence – which was not challenged – that it was "unusual" for the accused to contact Zoe directly instead of his supervisor Hazwan.[235] Even more tellingly, when the accused texted Zoe, he said nothing at all about wanting to meet his "boss": what he told Zoe was that he wanted to "cut [his] work permit" and to return to Bangladesh.[236] He subsequently contacted Fadhillah only because Zoe did not respond to his request to "cut" his work permit and merely directed him to Fadhillah. When the accused next called Fadhillah, he told the latter he "wanted to return to Bangladesh immediately because he had family problems" and "even volunteered to pay for his own flight ticket":[237] nothing was said at all about needing to "talk" to Fadhillah. The undisputed evidence of the accused's own behaviour

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232 Transcript of 24 September 2020, p 61 lines 25–31.

233 2AB906, para 7.

234 1AB146.

235 2AB902, para 8.

236 1AB146.

237 2AB902, para 9.

demonstrated, in short, that far from wanting to "surrender" to the police so that he could "put an end" to his "suffering", he was trying to find a way to flee Singapore for Bangladesh.

148 The Defence argued that the accused could not really have intended to return to Bangladesh because after withdrawing $1,000 from his bank account to remit to his family, he had only $37.78 left in his account, which would not have been sufficient to pay for an air ticket back to Bangladesh.[238] According to Fadhillah, a one-way ticket to Bangladesh would cost around $300 to $400; the accused's basic monthly salary was $500 to $600.[239] However, the Defence's argument ignored *the accused's own evidence*: in cross-examination, the accused himself testified that Ferh owed him one month's salary and that he also had some savings.[240] This piece of evidence was not retracted in re-examination. In the circumstances, it was not true that the accused would have found it impossible to pay for an air ticket.

149 Finally, in relation to the Defence's submission that the accused had wanted to "put an end" to his "suffering" by getting caught, getting charged and getting hanged for causing Yati's death, it should be highlighted that the arrest report of 31 December 2018 stated that he had put up a struggle during the arrest by the police at Ferh office premises, such that necessary force had to be used to effect the arrest.[241] Once again, this was behaviour which was inconsistent with the accused's claims about wanting to surrender to the police. When confronted with this evidence, the accused alleged that he had struggled because

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238 DCS, para 28.

239 2AB902, para 9.

240 Transcript of 24 September 2020, p 62 lines 20–21.

241 2AB871–872.

the officers who arrested him were not wearing uniforms and he "didn't know they were police", so when they "got hold of [him]" and "touched [his] neck", he "got angry".[242] However, his allegation that he "didn't know" the persons who came forward to arrest him were police officers could not be believed: in his investigative statement of 3 January 2019, the accused himself had stated that when he entered the Ferh office on 31 December 2018, "the plain-clothed officers came out" and "introduced themselves as [p]olice" before handcuffing him.[243]

150 I make two final points about the Defence's submissions in relation to the partial defence of diminished responsibility.

151 First, the Defence sought to attribute significance to Khalik's evidence that after the accused had told him about having "killed someone" and Khalik had asked why he had done so, the accused said: "my mind was wrong, I did it without thinking".[244]

152 With respect, I did not think the above statement to Khalik was of any substantive assistance to the Defence's case. It was not clear what the accused meant to convey by stating that his mind was "wrong", but even assuming he meant that his mental state had been substantially impaired by his AD, the veracity of this statement still had to be evaluated against other available evidence of his behaviour. In this connection, I have already explained why I found that the evidence of the accused's behaviour showed him to have acted in a considered and goal-directed manner (see [130]–[143]). As to why the

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242 Transcript of 24 September 2020, p 66 line 8 to p 67 line 11.

243 2AB986, para 37.

244 2AB930, para 5.

accused would have told Khalik that his "mind was wrong" and that he had killed Yati "without thinking", I found the explanation suggested by Dr Cheok to be persuasive. As Dr Cheok put it:[245]

> … [W]hen we relate stories to our friends and to … our relatives about incidents, and this is after the incident was done, we will try to present it in a manner that's favourable to us. Or at that point in time, they would have looked back and … realised the gravity of what they have done … and try to make sense of the whole situation and relate that … version to a friend or to a relative.

153 Given the presence of mind which the accused displayed before, during and after the killing of Yati, I concluded that his statement to Khalik was really an attempt to present to his "uncle"[246] a more palatable version of the killing: namely, an impulsive killing as opposed to a deliberate one.

154 Second, I noted that in the course of the Defence's closing submissions, there was an attempt to rely on the CA's decision in *G Krishnasamy Naidu v Public Prosecutor* [2006] 4 SLR(R) 874 ("*Krishnasamy*"). This was in the context of a criticism mounted by the Defence of Dr Cheok's evidence as to the absence of substantial impairment of the accused's mental responsibility for the offence. According to the Defence:[247]

> Without considering the numerous comments by the accused suggesting an act of finality for his life, and the qualitative evidence relevant to the strength of his adjustment disorder, Dr Cheok merely highlighted the fact the accused exercised self-control on the day in question because he tightened and released the towel three times before going through with his act. As a preliminary note, this is problematic. Dr Cheok appears to be taking too segmented an approach to whether the accused exercised self-control and judgment on the day itself. As the Court of Appeal in [*Krishnasamy*] opined at [4]–[6], the question

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245 Transcript of 18 September 2020, p 64 lines 21–31.

246 Transcript of 15 September 2020, p 89 lines 19–28.

247 DCS, para 85.

> should be more composite than that. In [*Krishnasamy*], the Court of Appeal found it strange that the trial judge concluded that despite the accused meeting limbs (a) and (b) [*ie*, the first and second limbs under Exception 7], the accused did not meet limb (c) [*ie*, the third limb] at all.

155 In respect of the above argument, it was wholly inaccurate of the Defence to describe Dr Cheok as having dealt with the issue of self-control simply by "highlight[ing] the fact the accused exercised self-control on the day in question because he tightened and released the towel three times before going through with his act". Contrary to the Defence's submission, besides the evidence of the accused having "rounded" the towel around Yati's neck on three occasions, Dr Cheok brought up in his testimony various other pieces of evidence which he had relied on to conclude that the accused's self-control was not impaired: for example, the fact that the accused had been able – whilst strangling Yati - to tell himself that she might report him to the police if he "didn't finish the process";[248] and the fact that he had, following the strangulation, performed acts such as extending the hotel room rental and instructing his friend to remit money, which showed that "there was presence of mind".[249]

156 As for the reference to *Krishnasamy*, it was not made clear exactly how the decision in that case could assist the present accused in establishing diminished responsibility. The CA in *Krishnasamy* was not suggesting that there was anything wrong in principle with the three-stage test conventionally applied by the courts when considering the partial defence under Exception 7: in its judgment, the court acknowledged (at [4]) that the three-stage test was a "convenient way of drawing attention to the three critical aspects of the

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248 Transcript of 18 September 2020, p 42 lines 1–5.

249 Transcript of 18 September 2020, p 39 lines 1–4.

provision in many cases", though it also cautioned that it might "sometimes [admit] of a misapplication of the law". In *Krishnasamy* itself, the CA held that the trial judge had misapplied the law in the following manner. The trial judge had accepted that the appellant in that case suffered from morbid jealousy which was a disease of the mind and a major mental illness. It was moreover a case in which the disease of the mind had "a close, if not the only, connection between the appellant's act and [the deceased's] death – a direct correlation between the subject appellant and the object deceased". Yet, despite these findings, the trial judge had rejected the reasoned medical opinion before him and had instead drawn various arbitrary distinctions in considering the evidence. Further, having already found the accused to be suffering from an abnormality of mind (*ie*, morbid jealousy), the trial judge had nevertheless gone on to draw comparisons between the appellant's "obsessive feelings" and the jealous feelings experienced by persons without such abnormality of mind, seeming to suggest that since the latter could exercise self-restraint, there was no reason why the appellant could not. At the end of the day, therefore, the CA held that while it was "conceptually possible" for the third limb of Exception 7 not to be satisfied even if the first two were, in *Krishnasamy* the trial judge had failed to provide convincing reasons why he found the third limb not made out.

157 If in citing *Krishnasamy*, the Defence was suggesting that the third limb of Exception 7 must be satisfied in most if not all cases where the first two limbs were satisfied, then such a suggestion would be erroneous: the CA's judgment did not establish any such general principle; and local case law is not short of cases where the court has held the third limb of Exception 7 not to be satisfied after finding the first two limbs to be made out: see, for example, *Wang Zhijian*. It should also be noted that in the CA's recent decision in *Nagaenthran*, they described (at [21]) the conventional three-stage test as being "cumulative

requirements"; and on the facts of *Nagaenthran*, the CA held (at [34]) that even if they were to assume in the appellant's favour that the first two limbs were satisfied, they were still unable to accept that the appellant suffered from an abnormality of mind that substantially impaired his mental responsibility for the offences.

Summary

158 For the reasons I have set out in [114]–[157], I held that the accused was unable to establish the partial defence of diminished responsibility on a balance of probabilities. I accepted the Prosecution's submission that this was "a considered act of violence, motivated by a mixture of the accused's pre-existing grievances against [Yati] and other instrumental reasons".[250]

Whether the partial defence of grave and sudden provocation was made out by the accused

The applicable test

159 In respect of the partial defence of grave and sudden provocation, the Prosecution and the Defence were agreed on the requirements which had to be met in order for this defence to be made out. In *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR 453 ("*Pathip*"), the CA held that there were two distinct requirements for the defence of provocation to apply (at [34]):

> First, it must be shown that the accused was deprived of self-control by the provocation ('the subjective test'). Secondly, the provocation must be grave and sudden, and it has to be determined whether an ordinary person of the same sex and age as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked as to lose self-control ('the objective test').

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250 PCS, para 77.

160 In respect of the subjective test, the CA in *Pathip* followed (at [35]) the definition of loss of self-control adopted by the Court of Criminal Appeal in *Regina v Duffy* [1949] 1 All ER 932: namely, "sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him … for the moment not master of his mind".

161 Importantly, the CA in *Pathip* also pointed out that where a killing was premeditated, the question of loss of self-control was "without more, quite irrelevant" (at [36]).

162 In respect of the objective test, it was held in *Pathip* (at [51]) that the conduct of the accused must be assessed by reference to the reasonable person with a broadly similar background. In this connection, there was "[n]o single abstract standard of reasonableness [to] be laid down": this was a "fact-centric assessment that ha[d] to be made in the context of the established facts". In assessing whether the objective test was met, there were two types of characteristics which the court could take into account: characteristics affecting a similarly placed reasonable man's level of self-control and characteristics affecting the gravity of the provocation (at [51]). However, an accused's exceptional hot temper alone should not be taken to exonerate an exceedingly violent response (at [51]).

Applying the test to the facts of the present case

163 In the present case, the Defence unequivocally identified the Humiliating Words as the provocation relied on for the accused's invocation of the partial defence under Exception 1.[251] For the reasons I have set out at [90]–

[251] DCS, para 34.

[107], I found that there were no such words spoken by Yati to the accused on 30 December 2018. In other words, the factual premise for the accused's reliance on the partial defence of grave and sudden provocation was non-existent.

164 In any event, for the reasons I have set out at [51]–[87], I found that this was a premeditated killing. After learning about Yati's new Bangladeshi boyfriend on 9 December 2018, the accused had already decided to kill her; he developed an algorithm whereby he would kill her if she refused to continue their relationship but would spare her if she agreed; and he came up with a step-by-step plan for the killing. Since this was a premeditated killing, the question of loss of self-control by the accused was without more, quite irrelevant.

165 Further, even assuming the Humiliating Words had been spoken by Yati, the evidence set out at [129]–[143] showed clearly that there was no loss of self-control by the accused throughout the killing. Looking at the series, the nature and the sequence of acts the accused performed throughout the killing, he went about making sure of Yati's death in a purposeful and systematic manner: strangling her with the towel; retrieving the rope and tightening it around her neck with multiple knots to effect a second strangulation; pressing on her mouth and nose with a towel; and finally twisting her head forcefully. On the evidence before me, it was simply *not* possible to describe this case as a crime of impulse committed in the heat of the moment.

166 I should add that the Prosecution relied on, *inter alia*, evidence of the accused's post-killing conduct in contending that there was no loss of self-control (for example, his actions in extending the hotel room rental, haggling

over the room rental rate, and taking Yati's valuables with him).[252] In this connection, as the CA pointed out in *Pathip* (at [42]), "whether post-killing conduct can be taken into account depends on the facts of each case". I considered that where the actions in question were carried out after some time had already elapsed from the killing, it might not be fair to rely on them as direct evidence of the accused's self-control at the time of the killing. However, while I did not rely on the accused's conduct post-killing to make any inferences about his self-control at the time of the killing, nothing about his conduct post-killing militated against my finding that he did not lose self-control; in fact, quite the opposite.

167 Finally, even assuming the Humiliating Words were uttered by Yati, I did not find that on a balance of probabilities, an ordinary person of the same age and sex as the accused, sharing his characteristics as would affect the gravity of the provocation, would have been so provoked as to suddenly lose his self-control. This was so even if the accused's AD was included as one of the characteristics to be considered. Even assuming the Humiliating Words were spoken, they could not be viewed in isolation; and their effects on the accused had to be considered against the background of their relationship: *Pathip* at [59]. As the Prosecution pointed out, although the accused and Yati had a long history together, by mid-2018 their relationship had broken down. It was not disputed that even before her relationship with Hanifa, Yati had already cheated on the accused by having a relationship with another Bangladeshi man (Shamim) in May or June 2018. It was also not disputed that even after Yati broke up with Shamim and reconciled with the accused, he had gone ahead with his plans for an arranged marriage, going so far as to apply for home leave in February 2019

252 PCS, para 98.

to return to Bangladesh for the wedding. While he had demanded that Yati continue her relationship with him until his return to Bangladesh, he was prepared for the possibility of rebuff: as he disclosed in his investigative statement of 3 January 2019,[253] by the evening of 23 December 2018 she had already made it clear that she would not remain in a relationship with him even for the one month before his departure for Bangladesh, and she maintained this position right up to 30 December 2018. The accused himself noted that by this time, Yati was not picking up his calls; and even when she acceded to his request for a meeting in person, she told him "it would be the last time [they] met". In the accused's own words, she "was closer with [Hanifa]";[254] and this was something he already recognised even before 30 December 2018.

168 In light of the above evidence, even assuming Yati had spoken the Humiliating Words to the accused on 30 December 2018, I did not find it probable that the utterance of these words would have transported the accused's passions to such an extent that he lost his self-control momentarily.

169 Given the heavy reliance placed by the Defence on *Pathip*, I should make it clear that I considered the present case to be very much distinguishable from *Pathip*. First, it must be remembered that in *Pathip*, it was accepted by the Prosecution, the Defence and the CA that the killing was not premeditated. In contrast, in the present case, the evidence pointed clearly to a premeditated killing.

170 Secondly, unlike the alleged provocation in the present case, the provocation in *Pathip* was sudden. The CA in *Pathip* found that the appellant

253 2AB980, paras 18–19.

254 2AB993, para 71.

had arranged to meet the deceased to reconcile with rather than to harm – let alone, to kill – her: for example, he had arranged to meet the deceased in a public place and had asked for her mother's permission to marry her. Shortly before proceeding to meet the deceased, he had also told his friends that he was going to meet her and would return with her later. He had thus expected the deceased to beg for his forgiveness, with the two of them reconciling thereafter. This was not the case with the present accused: as noted earlier, he was well aware by 23 December 2018 that Yati would not remain in a relationship with him even for the one month pending his return to Bangladesh.

171 It should also be noted that the killing in *Pathip* was clearly carried out in an "entirely random and frenzied manner" [emphasis in original omitted] with numerous external injuries inflicted over multiple regions of the deceased's body (*Pathip* at [41]). In contrast, as highlighted earlier, the evidence in this case showed the killing of Yati to have been methodically executed and far from frenzied.

Summary

172 For the reasons I have set out in [163]–[171], I held that the accused was unable to establish the partial defence of grave and sudden provocation on a balance of probabilities.

The submission by the Defence for a conviction under an alternative charge under s 300(*c*)

173 Given the findings I made in this case, there were simply no grounds for the belated contention in the Defence's closing submissions that the accused ought to be convicted of an alternative charge under s 300(*c*) of the PC. Section 300(*c*) relates to culpable homicide done with the intention of causing

bodily injury to any person, where the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. As I explained at [43]–[50], however, in the present case there could be no doubt at all that the accused acted with the intention to cause Yati's death.

Conclusion

174 For the foregoing reasons, I held that the Prosecution had proven the charge of murder against the accused beyond a reasonable doubt. I also held that the accused was unable to avail himself of either the partial defence of diminished responsibility or the partial defence of grave and sudden provocation. I therefore convicted the accused of the charge of murder under s 300(*a*) of the PC.

175 Under s 302(1) of the PC, whoever commits murder within the meaning of s 300(*a*) shall be punished with death. Having convicted the accused of the charge under s 300(*a*), I accordingly imposed the mandatory death sentence.

Mavis Chionh Sze Chyi
Judge of the High Court

Hay Hung Chun, Senthilkumaran Sabapathy, Soh Weiqi and Deborah Lee (Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Chooi Jing Yen and Hamza Zafar Malik (Eugene Thuraisingam LLP) for the accused.
