Public Prosecutor
v
P Mageswaran

[2017] SGHC 307

High Court — Criminal Case No 62 of 2016
Hoo Sheau Peng J
22–25, 29–30 November; 2 December 2016; 13 January; 11 May; 2 June; 20 July; 4 August 2017

Criminal Law — Offences — Culpable Homicide

Criminal Procedure and Sentencing — Sentencing — Culpable Homicide

29 November 2017

Hoo Sheau Peng J:

Introduction

1 The accused claimed trial to the following charge of culpable homicide not amounting to murder, an offence under s 299 and punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed):

> That you… on 9 December 2013, sometime between 8.41am and 9.40am, at Blk 875 Yishun Street 81, #02-179, Singapore, did cause the death of one Kanne Lactmy… female / 62 years old, *to wit*, by strangling the said Kanne Lactmy with your hand and pressing a pillow on the said Kanne Lactmy's face, with the intention of causing her death, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed).

2 By way of overview, it was undisputed that the accused knew Mdm Kanne Lactmy ("the deceased"). On 9 December 2013, the accused went to the deceased's flat at Yishun ("the flat") to borrow money. However, the deceased refused his request. While the deceased was in the kitchen, the accused searched the flat. When he tried to steal a box of jewellery, the deceased caught him in the act. A confrontation ensued, during which the deceased lost her life. The accused did not deny that he caused the deceased's death. His defence was that he did not have the intention to cause death, only the knowledge that he was likely by his act to cause death, and he should therefore only be found guilty of a lesser offence within s 299, punishable under s 304(*b*) of the Penal Code.

3 At the conclusion of the trial, I convicted the accused on the charge. Having heard parties' submissions on sentence, I sentenced the accused to 18 years' imprisonment with effect from 17 December 2013, the date he was placed in remand. The accused was more than 50 years old at the time of sentencing. By virtue of s 325(1)(*b*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), he could not be caned. Given the substantial length of imprisonment, I saw no reason to impose an additional term of imprisonment in lieu of caning.

4 The accused has filed an appeal against conviction and sentence. The Prosecution has filed an appeal against the sentence imposed. These are the detailed reasons for my decision.

The Prosecution's Case

5 I now summarise the important aspects of the evidence adduced by the Prosecution which expand on the overview of events given at [2] above.

Evidence of the deceased's son

6 The deceased's son, Sivakumar s/o Chinapan ("Siva"), testified that between 2000 and 2004, the accused was employed by his elder brother. During that time, the accused came to know Siva's family. Between 2000 and 2009, the accused attended several family functions at the flat. Over time, the deceased came to treat the accused as a friend. The deceased lived in the flat with Siva, his wife and his daughter. On 9 December 2013, Siva and his family were on holiday in India. Thus, the deceased was alone in the flat that day.

Evidence of the accused's wife

7 The accused's wife, Parmeswary A/P Thimparayan ("Parmeswary"), gave evidence that as at December 2013, they were staying in a room of a flat in Johor Bahru, Malaysia, which they were renting from Parmeswary's niece. On 9 December 2013, the accused asked Parmeswary about the payment schedule for their new flat in Johor Bahru. The accused told her he would try to convince his employer to lend them money to finance the payment of their new flat. He also said that he would collect $2,000 in tontine money that day.

8 The accused left home at 6.30am and returned at about 1pm to 2pm. The accused told Parmeswary that his employer had agreed to lend him $2,000. The next day, the accused left for work at about 5am. At 2pm, he called Parmeswary to tell her that he had collected the $2,000 from his employer and also the $2,000 in tontine money. That day, he bought jewellery for her and also redeemed a gold bangle of hers from a pawnshop. Over the next four days, from 11 to 14 December, the accused did not go to work. However, he gave his wife various sums of money, including RM5,000 to pay the deposit for the new flat.

9 On 17 December 2013, the couple had a heated argument. Parmeswary asked how the accused would be able to return the loan to his employer if he continued to miss work. She insisted on going to Singapore to verify with his employer that he had really taken a loan. While they were at the immigration checkpoint at Woodlands, the accused was placed under arrest.

The accused's statements

10 As part of its case, the Prosecution tendered seven statements recorded from the accused under the CPC. During the recording of all the statements, the accused spoke in Tamil. For the first statement, the accused's answers in Tamil were directly interpreted and recorded by the recording officer. For the remaining statements, a Tamil interpreter assisted in the process. The Defence did not challenge the admissibility of these statements and they were duly admitted into evidence.

First and second statements

11 The first statement was recorded on 18 December 2013 at 1.30am by Station Inspector Erulandy Guruthevan, pursuant to s 22 of the CPC. This was the accused's account of events:

> (a) On 9 December 2013, he came to Singapore from Johor Bahru at 8am. He had consumed three cans of beer before entering Singapore. He went to the flat at about 9am.
>
> (b) The deceased invited him into the flat. She went into the kitchen to make coffee. While he was having coffee, the deceased went into the kitchen to brush her teeth. As she was doing that, he went to her room without her knowledge, opened the cupboard, and took out "the jewel box".

(c) While he was taking the jewel box, the deceased suddenly came into the room and asked what he was doing. She said that if he did not hand over the jewel box, she would call her son. The accused told her he needed money. The deceased pulled the box from him. He pushed her onto the floor while holding on to the box. The accused begged the deceased not to inform her son but she continued to say that she would call him.

(d) The accused then "took the pillow and put [it] onto her face and pressed hard." Shortly after, he "removed the pillow from her face and she was breathing very fast." He "got worried", and so he took the jewel box and left the house. He returned to Johor Bahru and sold the jewellery for RM26,000.

12 The second statement – the cautioned statement – was recorded at 11.30am by Assistant Superintendent of Police Tan Lee Chye Raymond pursuant to s 23 of the CPC. At that time, the accused had been charged with committing an offence of murder under s 300, punishable under s 302 of the Penal Code. After the charge was read to him, he said this in response:

> I have no intention to cause her death. I was drunk at that time. I know what I did was wrong. I don't know that she died. I had used a pillow to cover her face and my hands were on the side of her head. I held and pressed the pillow against her face for about ten minutes. I did this because she saw me holding her jewellery box and she wanted to inform her son. After ten minutes, I let go the pillow and I noticed she was panting for air. I took the jewellery box and I left the flat. I am heavily in debt. I do not know how to solve my problems.

Third, fourth and fifth statements

13 The third, fourth and fifth statements were recorded by Inspector Razali bin Razak ("Inspector Razali") at 9.20am on 20 December 2013, 2.20pm on 20

December 2013, and 1.10pm on 22 December 2013 respectively. Read together, these three statements provide a detailed account of what happened when the accused was in the flat with the deceased.

14 According to the accused, he had gone to the flat at about 8am with the intention of borrowing $3,000 either from Siva or, if Siva was not around, from the deceased. A month earlier, he had asked his boss for a $2,000 loan but was refused. He had not made any arrangement with Siva or the deceased beforehand.

15 The accused left his house in Johor Bahru at about 6am. On the way to Singapore he bought and consumed three cans of "Clipper" beer. On arriving in Singapore, he made his way to the flat by bus. When he reached the flat, the deceased invited him in. She smelt alcohol on his breath and offered to make him some coffee.

16 As the accused was having his coffee, he told the deceased that he needed to borrow $2,000 to $3,000 to pay the deposit for his new flat. The deceased replied that she did not have so much money. The deceased then said that she wanted to brush her teeth and entered the toilet in the kitchen. While she was inside, the accused searched each of the three rooms in the flat for jewellery or money. He found nothing in the first two rooms. He then entered the master bedroom. He forced open the locked cupboard door, searched the cupboard, and found a box containing jewellery. He decided to "steal them".

17 As he was holding the box, the deceased went into the master bedroom. Placing the box on the bed, he pleaded with her to let him keep it. He promised to repay her the money in instalments. The deceased refused and asked him to return the box, failing which she would call Siva. He pleaded with her not to do

that. He said in his third statement: "At that time I did not know what to do. All I was thinking about was my money problem". The deceased came closer to him. He used both his hands "to push her shoulder very hard" such that she fell backward and landed on the floor.

18 In his third statement, the accused gave this description of what he did to the deceased while she was on the floor:

> I then pushed Siva's mother and she fell to the floor. She was lying facing up and her head was near the room door and her legs near to the toilet. Immediately I took a pillow on the bed and knelt on her with both knees in between her stomach. I used the pillow to cover her face with my right hand. At the same time I used my left hand to grab her neck. Siva's mother was struggling and at the same time she was groaning. After about 3 to 4 minutes I released my left hand as I felt tired but still cover her face with the pillow with my right hand. Siva's mother was still groaning and struggling slightly. After about 10 minutes, Siva's mother was not struggling anymore and I also started to perspire. I decided to remove the pillow and threw it on the bed. Siva's mother was gasping for breath.

19 This account should be read with the following explanation in the fourth statement. The accused had been asked to elaborate on what he had done to the deceased while she was on the floor and said this in response:

> First I took one of the pillows on the bed and straight away I went down on her with both my knees on her sides near the waist level. I did not sit on her. Siva's mother's hands were trying to push me away and at the same time she pleaded to me to let her go. I took the pillow and pressed her face with it very hard using my right hand. At the same time I used my left hand to grab her neck to prevent her from moving too much. Both her hands were by her sides struggling to break free and at the same time both her legs were kicking about trying to break free and this went on until about 10 minutes later when her hands and legs stop struggling. At this moment I removed the pillow and threw it on the bed. I then noticed that Siva's mother was gasping for air and her eyes were still opened. I then took the box and left the house.

20 The accused also claimed that he had used his left hand to grab "her neck below the jaw" hard enough that he got tired after three to four minutes. However, he did not "squeeze" her neck as his left hand was weak from having been injured in a road traffic accident in the 1980s. When asked to estimate the amount of force he had used to press the pillow against the deceased's face, he responded that he could not, though he did say that after some time he started to perspire and the deceased stopped struggling. After he removed his left hand from the deceased's neck, the accused used both his left and right hands to press the pillow against the deceased's face. The pillow was in a horizontal position the entire time.

21 The accused was asked what would happen to a person who was prevented from breathing normally. His response was that the person would die. Similarly, the accused was asked what would happen to a person who was "suffocated or "strangled" and his response was that "the person will die because of lack of oxygen". However, he claimed that when he pressed a pillow against the deceased's face and grabbed her neck hard, his intention was "to stop her from struggling"; he did not think about the consequences of his action as he was thinking about his "money problem".

22 To return to what happened once the accused saw the deceased gasping for breath, the accused said that he "got scared" and placed the jewellery box in his sling bag, wore his blue jacket with the attached hood, and left the house. He then returned to Johor Bahru. The next day, 10 December 2013, he pawned the jewellery he had stolen for RM26,000. He and his wife then paid RM5,000 for the deposit for the new flat. He also purchased a gold chain for his wife. On the morning of 17 December 2013, he quarrelled with his wife. She was angry with him for not going to work and for drinking. His wife said it would be best

if he stayed with his sister in Singapore. He disagreed, but his wife insisted. He was arrested when he reached the Singapore customs checkpoint.

Sixth and seventh statements

23 I now come to the sixth statement which was recorded by Inspector Razali on 22 December 2013 at 3.10pm. In the course of the recording of this statement, the accused demonstrated what he had done to the deceased. Specifically, he demonstrated two distinct positions.

(a) In the first position ("Position 1"), he used his right hand to press the pillow against the deceased's face while using his left hand to grab the deceased's neck region. This position is meant to correspond to what was described at [18]–[20] above.

(b) In the second position ("Position 2"), he used both hands to press the pillow covering the deceased's face. His hands were pressing down on the parts of the pillow to the side of the deceased's face, rather than on the deceased's face itself. This position is meant to correspond to what was described at the latter part of [20] above.

24 The seventh statement, recorded by Inspector Razali on 23 December 2013 at 4.50pm, was less material to the present proceedings. In it, the accused provided information on his family, educational and work backgrounds. He said that he had studied until Primary Four. Thereafter, he had worked at various odd jobs.

Evidence of those who attended to the deceased

25 The deceased was found by Gayisin Simi ("Gayisin"), a domestic worker in the employment of the deceased's neighbour. At about 12pm, Gayisin

received a telephone call from the deceased's younger sister saying that she could not contact the deceased. Gayasin went to the flat to check on the deceased. As the keys to the door had been left inside the padlock, Gayisin unlocked the door and entered the flat. She found the deceased lying unresponsive on the floor of her bedroom. Gayasin called for an ambulance and reported the matter to the police. At around 12.26pm, paramedics from the Singapore Civil Defence Force arrived at the flat. They performed cardio-pulmonary resuscitation on the deceased but did not detect any pulse. The deceased was conveyed to Khoo Teck Puat Hospital where, after further attempts at resuscitation, she was officially pronounced dead at 1.30pm.

Evidence of the forensic pathologist

26 On 10 December 2013, Dr Marian Wang ("Dr Wang"), a consultant forensic pathologist with the Health Sciences Authority, performed an autopsy on the deceased. According to the autopsy report, the cause of the deceased's death was manual strangulation, as evidenced by external and internal neck injuries.

27 The significant external neck injuries were:

(a) Four bruises on the front of the neck; namely:

(i) A 4 x 3cm bruise on the right side of the jawline;

(ii) A 4 x 3cm bruise just below the left side of the jawline;

(iii) A 6 x 2cm bruise at the middle level of the anterior aspect of the neck across the midline (more prominent on the left side);

(iv) A 2 x 2cm bruise on the middle level of the left lateral aspect of the neck; and

(b) A scratch abrasion across the front of the neck.

28 The significant internal neck injuries included:

(a) Haemorrhage of the internal neck muscles;

(b) Haemorrhage of the tissue surrounding the left vagus nerve;

(c) Haemorrhage of the thyroid gland;

(d) A fracture of the hyoid bone; and

(e) A fracture of the thyroid cartilage.

29 Dr Wang also found subconjunctival haemorrhage in both the deceased's eyes. There was also a bruise at the back of her head, multiple bruises on the back of her hands, a few bruises over her forearms, one bruise on each shoulder and a couple of bruises around the left clavicle.

30 As Dr Wang explained, there were three relevant ways in which manual strangulation could result in death: compression of a person's blood vessels (which deprives the brain of oxygenation from fresh blood), compression of a person's airway (which prohibits gaseous exchange into the lungs) and vagus nerve stimulation. In the case of the death of the deceased, the two former mechanisms were present.

31 Compression of the blood vessels was evidenced by the subconjunctival haemorrhage in the deceased's eyes – also referred to as petechial haemorrhage. Such haemorrhaging would usually be due to the compression of blood vessels in the neck resulting in back-damming of the blood from the face. As for compression of the airway, this was evidenced by the fractures to the deceased's hyoid bone and thyroid cartilage, which formed part of the skeleton of the airway.

32 In Dr Wang's opinion, only the application of "significant or severe force" could have caused these fractures because the hyoid bone and thyroid cartilage are bony structures which are not directly beneath the skin, but buried deep within the throat, covered by muscles (in fact, multiple layers of muscles) and then skin.

Evidence of the psychiatrist

33 The accused was examined by Dr Stephen Phang ("Dr Phang"), a senior consultant psychiatrist with the Institute of Mental Health, on four occasions in January 2014. Dr Phang produced a psychiatric report dated 30 January 2014 in which he concluded that the accused was "not of unsound mind" at the time of the offence, that his "mental responsibility was not in any way diminished then", and that he was presently fit to plead. Specifically, he made the following observations in his report:

(a) The accused had a noticeable stutter (which was present whether he spoke in English or Tamil). However, he showed no psychotic symptoms and was not found to be labouring under any cognitive deficits of note.

(b) A CT scan of the accused's brain was taken on 14 January 2014. This revealed the presence of a developmental venous anomaly ("DVA") in the accused's left frontal lobe. Notwithstanding this finding, Dr Phang's view was that the accused's brain scan was normal.

(c) Upon assessment of the accused's intellectual functioning, the accused was not found to have met the criteria for a diagnosis of intellectual disability. As Dr Phang explained in giving evidence, to be described as "intellectually disabled", one generally needed to be in the

bottom 1% of the population, whereas the accused's overall intellectual ability placed him in the bottom 5% of the population. Notwithstanding his low intellectual ability, Dr Phang's view was that the accused was not observed to have any deficits in executive functioning.

(d) The accused did not suffer from any formal psychiatric or mental illness. He had a history of alcohol dependence syndrome, and was a chronic alcoholic. However, his alcohol abuse did not in any way affect his mental responsibility at or around the time of the alleged killing.

34 As will be explained below, the Defence contended, *inter alia*, that the accused suffered from frontal lobe dysfunction. For convenience, I will return to the evidence of Dr Phang and two other Prosecution witnesses concerning the accused's mental condition at [44] below.

The Defence's Case

35 At the close of the Prosecution's case, I found that there was sufficient evidence upon which to call upon the accused to give evidence in his own defence. The accused's testimony was largely consistent with what he had said in his statements. It is only necessary to highlight the parts of his examination-in-chief and cross-examination where he gave a different account from his statements in relation to what he had done to the deceased, as follows:

(a) He said that the deceased began to shout once he refused to return the box. She shouted that she would call Siva. Later, in cross-examination, he also said that the deceased shouted, "Give the jewel box". He said that when he pushed her onto the floor, she was shouting too. It will be noted that in his statements, the accused did not mention that the deceased was "shouting", at least not explicitly.

(b) He was shown one of the photos taken of his re-enactment of Position 1, in which he had his left hand around the area of a mannequin's neck. He demonstrated in court that his left hand was below the *chin*.

(c) He was asked why he had moved from Position 1 to Position 2. His answer was this: "Because head never and then fast left and right. Shout left hand, shout right hand. So I held. So I did this. I kept like this. Shaking head." He clarified that it was the deceased's head that was shaking.

(d) When shown a photo of him with in Position 2 and asked what he was trying to do in that position, he said "Again her head, here and there she shook. So I kept it straight in order not to shout".

(e) When asked why he had stopped holding his hands in Position 2, he explained: "I saw she hand and leg I saw was not shaking".

(f) During cross-examination, when he was referred to the paragraph from his third statement reproduced at [18] above, he replied "Not the neck" and then pointed to the area under his chin. It was not quite clear whether he was referring to the chin or the jaw, but counsel for both sides agreed that there was no material difference in describing it as either the chin or the jaw. When asked again, the accused maintained that his left hand had been on the deceased's jaw with his fingers along the jawline.

The accused's mental condition

The defence's evidence

36 The Defence adduced evidence from Dr John Bosco Lee ("Dr Lee"), a forensic psychiatrist in practice at Adelphi Psych Medicine Clinic, and Dr Matthew Woo ("Dr Woo"), a principal consultant clinical psychologist at the same clinic, to establish that the accused suffered from frontal lobe dysfunction.

37 The Defence submitted that frontal lobe dysfunction was established based on three factors: (a) the identification of the DVA on the accused's CT scan, (b) a diagnosis that he suffered from expressive dysphasia (which was indicative of left frontal lobe deficits), and (c) results from neuropsychological assessments suggesting that he had executive deficits consistent with left frontal lobe issues.

38 As regards the DVA, it was not disputed that the CT scan showed the presence of a DVA in the accused's left frontal lobe. According to Dr Lee, this was an abnormal CT scan.

39 As regards expressive dysphasia, Dr Lee explained that a person who has expressive dysphasia has difficulty "in getting words and organising words so as to be able to effectively express his idea". He assessed that the accused was suffering from this based on the fact that, during his interactions with the accused, the accused had difficulties expressing himself on several occasions, and would stop in his speech to spell out the word. He listed occasions where the accused had (a) used his finger to write the letter "w" in the air when trying to say his name, (b) used his finger to write the numbers "7" and "5" in the air when speaking of his birth year (1967) or the year his wife bought a flat (2015), and (c) spelt out seven specific words instead of saying them.

40 As regards executive deficits, Dr Woo conducted neuropsychological assessments. In a report dated 24 October 2016, Dr Woo's conclusions were that (a) in terms of intellectual functioning, the accused was in the borderline range, (b) in terms of memory functioning, the accused was impaired in verbal modalities but had intact visuospatial skills, and (c) in terms of executive functioning, the accused had deficits "resulting in difficulties with planning (problem solving), self-control (inhibition), expression (verbal fluency) and mental flexibility".

41 The first two findings by Dr Woo were not contentious. However, his conclusion on the accused's executive functioning deficits was disputed, and I therefore elaborate on the observations made by Dr Woo. Dr Woo's view was based on the accused's performance on a number of neuropsychological tests, in particular the Wisconsin Card Sorting Test ("WCST") and the Controlled Word Association Test ("COWAT").

42 As to the accused's performance on the WCST, Dr Woo noted that "mental flexibility was impaired, with severe losses in the ability to shift sets related to inhibition functions". I should explain the significance of the accused's failure to "shift sets". As I understood it, the WCST tests an examinee's perseveration by making him sort a stack of cards (each containing some picture) according to a certain principle, say, by colour. The examinee does not know the sorting principle; all the tester does is to tell him when he sorts a card whether he is right or wrong. After the examinee sorts a number of cards correctly, the sorting principle changes. The examinee will then have to figure out how to sort the cards by the new category. Perseveration is indicated by the examinee's inability to sort the cards according to the new category. His response of sorting the cards according to the previous category is "perseverated" and he is thus unable to sort the cards according to the new

category; he is unable to "shift sets". This in turn is an indicator of the examinee's inhibition and self-control. Dr Woo was of the view that the accused's performance on the WCST showed that he had strong signs of perseveration, since his perseverative error score was within the severely impaired range.

43 Dr Woo added that the assessment results of the WCST and other tests (besides the COWAT) provided "some evidence of executive/frontal deficits, and account for [the accused's] problems with verbal fluency on the COWAT and expressive difficulties during the assessment process". Finally, Dr Woo added that the accused's history of drinking problems might have contributed to his deficits in executive functioning.

The Prosecution's responses

44 With that, I return to the Prosecution's evidence, beginning with that of Dr Goh Chin Kong ("Dr Goh"), a consultant radiologist at Changi General Hospital, who had verified and finalised a radiology report based on the CT scan of the accused's brain. Dr Goh testified that the DVA had no pathological significance in a patient who was asymptomatic (such as the accused). The DVA was a normal variant representing venous drainage in the brain. Dr Goh disagreed with Dr Lee's conclusion that the accused had "frontal lobe dysfunction caused by an organic lesion" because it was highly likely, based on the CT scan, that there was no such organic lesion. In this connection, Dr Goh testified that the DVA seen in the accused's CT scan was not in the area of the brain associated with motor speech functions – what is known as Broca's area.

45 Regarding expressive dysphasia, Dr Phang's view was that the accused's stutter or stammer was not expressive dysphasia. Expressive dysphasia referred to a loss or impairment in the production of language due to

significant pathology in Broca's area (as Dr Goh had also explained). A person with expressive dysphasia would have speech that was very sparse, laboured, slow and hesitant; there would be disturbances in inflection and rhythm; and function words like prepositions, pronouns and verbs might even be dropped from speech. In short, the person would have marked and obvious difficulties in carrying out normal communication or conversation. Dr Phang did not observe such features in the accused's speech when he interviewed him.

46 Furthermore, as Dr Phang noted, expressive dysphasia was commonly associated with a pathological condition in the left frontal lobe of the brain, but the accused's brain's scan was normal. In this regard, Dr Phang, like Dr Goh, disagreed with the significance attached by Dr Lee to the DVA. Dr Phang's view was also that the detection of the DVA was an incidental radiological finding bearing no clinical significance. Dr Phang said that despite noting the identification of the DVA in the radiology report, he did not pursue any further investigation – this was because the chances of it leading to any issues or problems and functioning were "virtually non-existent".

47 After the close of the Defence's case, the Prosecution made an application to call Dr Kenji Gwee ("Dr Gwee"), a principal clinic forensic psychologist at the Institute of Mental Health, as a rebuttal witness. The Defence did not object to this application. Dr Gwee questioned Dr Woo's reliance on the accused's performance on the WCST and COWAT as indicators that the accused had deficits in executive functioning. In Dr Gwee's view, the WCST was a complex test that measured multiple domains of neuropsychological function, including abstract reasoning. Thus, the accused might have performed poorly on the WCST because he did not have the abstract reasoning required to perform the test, and not because he had problems with inhibition. In respect of the accused's problems with verbal fluency on the COWAT, Dr Gwee

commented that problems with verbal fluency did not necessarily mean the accused lacked inhibition; verbal fluency and inhibition are two domains of executive functioning with no explicit link.

The law and the parties' positions

48 With that, I turn to the law. Section 299 of the Penal Code provides:

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

Therefore, to constitute an offence within s 299, the *actus reus* is that of doing an act which causes death. As for the *mens rea* of the offence, s 299 contains three distinct limbs.

49 The Prosecution framed the charge based on the first limb – that of "the intention of causing death". To establish the charge as framed, the Prosecution bore the burden of proving, beyond a reasonable doubt, that the accused did an act which caused the death of the deceased, and that the accused did the act with the intention of causing death. This would be punishable under s 304(*a*) of the Penal Code.

50 The Defence, though not disputing that the accused committed the act which caused death, argued that the accused did not intend to cause the deceased's death. Instead, the accused only knew that his actions were likely to cause the deceased's death, being the third limb within s 299 – that of *"knowledge that he is likely by such act to cause death"*. If the accused only

had the knowledge that his act was likely to cause death, he would be guilty of what would in effect be a less serious offence under s 299 which would be punishable under s 304(*b*) of the Penal Code.

51 I set out the punishment prescribed by s 304 of the Penal Code:

> **Punishment for culpable homicide not amounting to murder**
>
> **304**. Whoever commits culpable homicide not amounting to murder shall —
>
> (*a*) if the act by which death is caused is done *with the intention of causing death*, or of causing such bodily injury as is likely to cause death, be punished with —
>
> (i) imprisonment for life, and shall also be liable to caning; or
>
> (ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning; or
>
> (*b*) if the act is done *with the knowledge that it is likely to cause death*, but *without any intention to cause death*, or to cause such bodily injury as is likely to cause death, be punished with imprisonment for a term which may extend to 10 years, or with fine, or with caning, or with any combination of such punishments.
>
> [emphasis added]

52 As regards proving the *mens rea*, the inquiry under the first limb of s 299 is fully subjective (*Public Prosecutor v Sutherson, Sujay Solomon* [2016] 1 SLR 632 ("*Sutherson*") at [46(a)]. Thus, factors specific to the accused, such as any mental condition, should be taken into account. Yet intention is rarely proven by direct evidence and inevitably has to be inferred from the surrounding circumstances. Thus, when determining if there was intention to kill, the court must consider all the relevant and admissible evidence, and the relevant personal characteristics of the accused. The relevant evidence would include an accused's evidence in court, what he told the police and the evidence of other witnesses. Importantly, it would also include the nature of the acts themselves:

the type of weapon used (if any), the nature, location and number of injuries and the way the injuries were inflicted (see Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2nd Ed, 2012) at paras 9.27–9.29).

53 In this regard, I should also state that in the context of a murder charge under s 300(*a*) of the Penal Code, it is well settled that an intention to cause death can be formed on the spur of the moment, just before the actual killing takes place, and does not have to be pre-planned or premeditated: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 at [34]. I am of the view that this observation is equally applicable in the context of an inquiry into whether an offender has the intention to cause death for the purpose of the offence under s 299 since, as I noted in *Sutherson* at [46(a)], the fault element under s 300(*a*) maps onto the first limb of s 299.

54 By and large, parties did not dispute the applicable legal principles. However, there were disputes over the exact manner in which the accused carried out the acts which caused death, and much disagreement over the evidence of the forensic pathologist, psychiatrists and psychologists. Based on their opposing positions on the contested evidence, parties contested the *mens rea* possessed by the accused at the material time. Given the conflict in opinion between the Prosecution's and the Defence's expert witnesses, it is useful to add that where there is such a conflict, the court's role is restricted to choosing one of the conflicting views; it cannot substitute its own views. At the same time, a court should not accept expert evidence unquestioningly but must test it against the objective facts of the case (see *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76]).

Decision on conviction

Whether the accused caused the death of the deceased

55 With that, I now turn to my analysis and findings. On the *actus reus*, as stated above, there was no dispute that the accused's act caused the deceased's death. However, there were two disputed aspects of how the attack took place. As will be seen, these were also relevant to the issue of the accused's *mens rea*. Thus, I set out my findings on these disputed aspects.

Whether the accused grabbed the deceased's jaw or neck

56 First, the Defence argued that the accused *only* grabbed the deceased by her jaw or chin, and not by the neck. The accused pressed against her jaw or chin to stop her from shouting. This factual dispute was raised in the context of a submission that the accused did not intend to strangle the deceased. I rejected this claim and accepted the Prosecution's submission that he had grabbed the deceased by the neck. In other words, I found that the accused had strangled the accused. This was clearly borne out by the contents of the accused's statements to the police, and the objective evidence of the neck injuries suffered by the deceased.

57 In the first two statements, the accused did not mention that he had strangled the deceased. He only admitted to having suffocated her with the pillow. However, in the third, fourth and fifth statements, the accused stated that he had used his left hand to grab the deceased's neck (see [18]–[20] above). When asked by the court whether he knew the Tamil words for "neck" and "jaw", the accused replied that he knew the Tamil word for "neck" but not for "jaw". The Defence suggested that the accused's ignorance of the Tamil word for "jaw" accounted for his repeated use of the word "neck" in his statements.

58 I did not accept this submission. I noted that the accused used the word "jaw" on one occasion in his statement. To a specific question about how he grabbed the deceased's neck, he said that he grabbed "her neck below the jaw" (see [20] above). This indicated that there was no confusion during the recording of the statements between the words "neck" and "jaw", and that the accused was aware of the distinction between the two words. Even at this point in the statement, he did not say that he only grabbed the deceased's jaw, but was saying that he was grabbing the deceased's neck.

59 Next, in cross-examination, the accused claimed that during the recording of his statements, he merely demonstrated the movement with his left hand to the interpreter without saying the word "neck", and that based on his demonstration, the interpreter recorded him as saying that he grabbed the neck of the deceased. If indeed the accused merely demonstrated the movement, his claim would be that the interpreter (and Inspector Razali who recorded the statements) wrongly referred to him grabbing the deceased's "neck" rather than her "jaw" when recording his statements. In my view, this was quite contrived, given the multiple occasions on which he had a chance to correct the statements if they were inaccurate. In my view, the accused's claim that he had only grabbed the deceased's jaw and not the neck was a disingenuous attempt to downplay the gravity of his act.

60 The Defence argued that during the re-enactment of Position 1 (see [23(a)] above), two photographs taken of the re-enactment (P132 and P133) showed that his left hand had only made contact with the jawline of the deceased without touching her neck. I did not quite agree with the observation. It is true that in these two photographs, the tip of the accused's left thumb and his fingers could be seen to extend to the jawline. Nevertheless, his hand appeared to reach around the neck region. The two photographs certainly did not show the accused

merely trying to push the jaw or the chin of the deceased to stop her from shouting. Rather, in my view, the depictions were broadly consistent with the references in his earlier statements of having grabbed the deceased's neck.

61 In any case, the accused's claim that he had only grabbed the deceased's jaw became plainly unsustainable once I factored in the objective evidence, in the form of Dr Wang's autopsy findings, that the deceased suffered multiple injuries to her neck. As mentioned at [27], Dr Wang found four external neck injuries on the deceased. It is true that two of the external neck injuries were on the right and left side of the deceased's jawline. Indeed, the Defence relied on photographs showing the bruises on the bottom left area of the deceased's jaw and the right side of the deceased's jawline to submit that the accused must have grabbed the deceased's jaw, not her neck.

62 However, these jawline injuries by themselves did not show that the accused grabbed only the jaw, and not the neck. Once I factored in the *internal* neck injuries, it became clear that the accused must have also grabbed the deceased's neck. Significantly, as Dr Wang testified, there were fractures of the hyoid bone and thyroid cartilage. The horns of both the hyoid bone and thyroid cartilage were fractured. Since the horns were situated at the *side* of the neck, there must have been lateral compression for them to have been fractured. This meant that the accused must have pressed down on the side of the deceased's neck. That said, it was a fair inference to make that the external bruises near the jawline show that, *in addition to* grabbing the deceased's neck, the accused also made contact with her right and left jawline.

63 Nonetheless, to the extent that the Defence's submission was that the accused *only* grabbed the deceased's jaw and not the neck, that submission was unsustainable. Therefore, I found that the accused strangled the deceased. As I

mentioned earlier, this factual dispute was raised in the context of the submission that there was no *intention* by the accused to strangle the deceased – the implication being that there was therefore no intention to kill her. Again, I did not accept this. From the accused's statements, it was quite clear that the accused intended to grab the deceased's neck, *ie*, to strangle her. In this regard, I also refer to my observations below that, based on the significant force used, as well the duration of the act of strangling, the accused had the intention to kill the deceased.

Whether the accused used significant force

64 I come to the second area of dispute. The Defence disputed Dr Wang's opinion that the nature of the deceased's injuries showed that the accused had used a significant or severe amount of force. I rejected that submission. I found that the accused grabbed the neck of the deceased with significant force that was sufficient to cause fractures in skeletal structures which Dr Wang described as being buried deep within the throat (see [32] above).

65 The Defence argued that Dr Wang's conclusion that significant force was used was undermined by her concessions that: (a) the classification of force as "significant", "moderate" or "mild" depended on one's definition of these terms, and no objective evidence had been led by the Prosecution to measure such descriptions; (b) the fractures could have been caused by a single instance of pressure instead of sustained pressure; (c) the fractures in question could have been caused relatively easily due to the size, location and shape of the bones and the deceased being older in age, thus making her more susceptible to fractures due to the brittleness of her bones; (d) the fractures did not cause the death of the deceased; and (e) there was no forensic evidence of the amount of force applied to the blood vessels in the deceased's neck.

66 I will address these arguments in turn. On the first point, Dr Wang explained that forensic pathologists classified the amount of force used into three categories: mild force would cause a skin bruise but no internal haemorrhaging, moderate force would cause a skin bruise with some underlying muscular bruising, and severe force would cause skeletal fractures. Therefore, by the classification, the force used by the accused would have been severe since there was fracturing of a bone, although she added that it would "really [depend] on how you define severe, moderate or mild". The Defence sought to challenge Dr Wang by suggesting that the appropriate classification of the force applied to the deceased's neck was "moderate". However, the Defence did not produce any evidence to challenge Dr Wang's classification, as a forensic pathologist, of the force as "severe". In any case, the more important point established was that the force used by the accused was sufficient to cause deeply embedded skeletal fractures.

67 Turning to the second point, although Dr Wang agreed with Defence Counsel that the fractures could be caused by an instantaneous or brief application of pressure, she did so after explaining that fracturing even a small bone such as the hyoid bone would require a significant amount of force. She was not conceding that the brief application of force meant that the force was insignificant.

68 As for the third point, the size or shape of the bones was not material. As mentioned in the previous paragraph, even the fracture of a "small bone" needed significant force. As for the deceased's age, Dr Wang had explained that the difference in the amount of force required to cause such fractures in a younger individual was not much more than would be needed with an older individual.

69 The fourth and fifth points can be taken together. The fact that the skeletal fractures did not cause the deceased to die did not have any bearing on the question of the amount of force needed to cause the skeletal fractures. As Dr Wang explained a few times, the predominant cause of death would have been occlusion of blood vessels. One can have manual strangulation leading to death without any of the fractures. The presence of fractures was simply a marker of the force applied but had no bearing on the fatality of the occlusion of the vessels.

70 I turn to the point on whether or not the accused's left hand was weak because of an old injury. In my view, the Defence's reliance on the accused's left hand being "weak" did not advance its case. Whether or not the accused's left hand was "weak", he was capable of causing the injuries to the deceased's neck as detailed in the autopsy report. As mentioned, these included fractures of the skeletal structure necessitating the application of a significant amount of force.

Whether the accused intended to cause the death of the deceased

71 I now explain why I found that the accused had intended to cause the death of the deceased. To reiterate, I noted that the Defence did not deny that the accused had knowledge that the acts would likely cause the death of the deceased. However, the Defence contended that all the accused had was that knowledge and not the intention to cause the death of the deceased. I did not accept this contention. It was abundantly clear to me that the accused had the intention to cause the death of the deceased. This conclusion rested on three factors:

(a) First, the nature of the accused's acts. The accused had not only strangled the deceased but suffocated her. In this regard, I have already

found (see [63]) that the accused had strangled the deceased, and that he had intended to do so. In his statements, the accused admitted to knowing that *either* strangulation or suffocation alone could cause a person to die (see [21] above). I should add that this was consistent with the medical evidence. Dr Wang explained that manual strangulation would cause death if the brain were deprived of oxygen for four to five minutes, and that if such strangulation was accompanied by suffocation with a pillow, there would be both occlusion of the nose and mouth and compression of the neck, resulting in death occurring faster. The accused's use of both strangulation and suffocation therefore supported the inference that he intended to cause death.

(b) Second, the duration of the accused's acts. The accused had strangled and suffocated the deceased for a prolonged period of time. In his statements, he said that he had strangled her for three to four minutes, all the while suffocating her, and then continued suffocating her after that, resulting in a total of ten minutes of suffocation. I appreciated that the lengths of time the accused said he had strangled and suffocated the deceased were his estimates. However, even if these were estimates, they were considerable lengths of time. In any event, during the trial, the accused did not dispute the timings he had provided in the statements.

(c) Third, the degree of force used. The severe force the accused had applied in strangling the deceased was evident from two aspects: first, the fractures of the hyoid bone and thyroid cartilage which I mentioned earlier, and second, his admission that his left hand was tired after three to four minutes of strangling the accused. Whether the tiredness was caused by his left hand being weak was beside the point, which was that he had exerted considerable energy in strangling the deceased. In

addition to the significant force he had used in strangling the deceased, the accused had also applied a significant degree of force in suffocating the deceased. This could be seen from his admission that he was perspiring when he had stopped suffocating her after ten minutes.

72 I should at this juncture deal with the accused's claim that his intention was to stop the deceased from shouting. As mentioned earlier, the accused testified that the deceased had shouted her threat to call Siva and had continued shouting throughout the time he was in Position 1 and Position 2 (see [35] above). The Prosecution sought to challenge the veracity of the accused's claim that the deceased had shouted for help before the accused had pushed her onto the floor. It was argued that the accused had not, in his statements, mentioned the deceased's shouting, and that this therefore showed that the deceased had not in fact shouted. I did not agree entirely with the Prosecution. The accused did mention the deceased's threat to call Siva, even though he did not describe the manner in which she voiced that threat – whether it was by shouting or otherwise. Furthermore, Dr Phang had recorded, both in his contemporaneous handwritten notes of his interviews with the accused, and the psychiatric report he produced thereafter, that the accused mentioned to him that the deceased had shouted. Therefore, I was prepared to accept that, at some point after the deceased found the accused with the jewellery box, she would have been making noise that was loud enough for the accused to want to silence her.

73 Even so, I did not agree with the Defence that the accused did not have the intention to cause the deceased's death because his intention had only been to stop the deceased from shouting. In my view, he chose to silence the accused by causing her death. He was not content merely to muffle the deceased by placing the pillow on her face. He also intentionally grabbed her neck and strangled her forcefully, as can be seen by the deceased's serious neck injuries.

The combination of these two acts, strangulation and suffocation, taken together with the duration and forcefulness of the acts, led me to conclude that the accused intended to cause her death.

74 The Defence also highlighted that the deceased was gasping for air when the accused removed the pillow from her face, and that the accused did not continue to harm her thereafter. This, the Defence argued, indicated that the accused did not intend to cause the deceased's death. However, in my view, the fact of the matter was that the accused had already formed the intention to kill the deceased (albeit on the spur of the moment), and had acted on that intention when he strangled and suffocated her for a duration of about ten minutes before he lifted the pillow from her face. While the deceased might not have died before his very eyes, and that the accused chose to flee at that point, this did not detract from my finding of the accused's relevant state of mind when he committed the act.

75 I should add that I derived no assistance from the Defence's attempt to draw a parallel between the present case and *Public Prosecutor v Tan Chee Hwee* [1993] 2 SLR(R) 493. The two offenders in that case had each been convicted in the High Court of a charge of committing murder under s 300(*c*) of the Penal Code in furtherance of a common intention. They were both burgling a house when the maid returned sooner than they had expected. There was a struggle between the maid and both offenders. One of them sought to tie up the maid with a rope but the rope broke. The struggle continued and all three of them fell onto the floor. One of the offenders then picked up an electric iron and wanted to wind the cable that was attached to the iron around the maid's waist so as to tie her up. The cable ended up around the maid's neck instead, and she died from strangulation by asphyxiation. The Court of Appeal reversed the decision to convict the offenders of the charges under s 300(*c*), finding that

they only had knowledge that their acts were likely to cause death (at [56]). The Court therefore convicted them on reduced charges of culpable homicide not amounting to murder, punishable under s 304(*b*) of the Penal Code (at [57]).

76 There were significant differences between that case and the present. For one, there was in that case a botched attempt to subdue the maid by tying a rope around her. Also, one of the offenders had also tried to place his hand over the maid's mouth. There was also no evidence of manual strangulation. All these led the Court to think that neither offender had any intention to cause hurt to the maid (at [38]). The evidence was consistent with a finding that their aim was only to tie the maid up but not to cause her any hurt (at [46]). Furthermore, the offenders had more lethal tools at their disposal, such as the iron, which they could have used to hit the maid if their aim had truly been to "silence her forever". That they did not resort to this led the Court to find that the injury to the maid around her neck was "accidentally or unintentionally caused" (at [46]).

77 On the present facts, there was no evidence that the accused had sought to subdue the deceased by less violent means such as by covering her mouth. Instead, he immediately pressed a pillow to her face with hand and strangled her with the other hand at the same time. Both these acts were intentional. He attacked a vulnerable part of the deceased's body. He continued to do so for a considerable period of time. In my judgment, the fatal injuries to the deceased's neck could not be described as accidental or unintentional. Nor it could be said that he was trying to silence the deceased but ended up killing her unintentionally. Rather, as I have said, he wanted to silence her by killing her.

The relevance of the accused's mental condition

78 I now turn to discuss the mental condition of the accused. The Defence accepted that, whatever the accused's condition, it would not have rendered him

incapable of forming an intention to cause death. The relevance of his condition was to the overall assessment of whether he had the necessary *mens rea* of the charge. I considered that nothing in the evidence about the accused's mental condition detracted from my finding that he had formed the intention to kill the deceased. Nonetheless, I made certain findings pertaining to the disputes over the accused's mental condition in anticipation that they might be relevant to sentencing.

79 At the outset, it is important to highlight one thing. At the trial, the Defence focused on three factors (the DVA, expressive dysphasia, and neuropsychological tests indicating executive deficits) to show that the accused suffered from frontal lobe dysfunction. However, ultimately, in the Defence's submissions, it was the issue of whether the accused suffered executive deficits affecting his inhibition and decision-making capabilities that had significance because it would show that the accused did not have the intention to kill the deceased, only the knowledge that his acts would cause her death. Hence, what was most important in the final analysis was whether the accused suffered from executive deficits. Having said that, I will go on to set out the views I arrived at with regard to the DVA and expressive dysphasia.

The significance of the DVA

80 First, as regards the DVA, I accepted Dr Goh's opinion (see [44] above) that the accused's DVA in and of itself has no pathological significance. I also accepted Dr Phang's evidence that the presence of the DVA would not have warranted further medical attention or investigation (see [46] above).

Expressive dysphasia

81 Moving on, I found that the accused did not suffer from expressive dysphasia. I accepted Dr Phang's evidence that during the interviews with the accused, there were no signs or symptoms of expressive dysphasia at all. What Dr Phang observed, as was consistent with his interviews with the accused's family members, was that the accused had a stutter. Dr Phang had cogently explained the differences between stuttering and expressive dysphasia (see [45] above). The short point is that stuttering has no psychiatric significance and is a far different condition from expressive dysphasia. In this regard, I also accepted Dr Goh's finding that the accused's DVA was not sited near Broca's area of the brain (which is associated with speech function). Therefore, the DVA could not be the cause of any expressive dysphasia (assuming there was any by the time the Defence's experts assessed the accused).

82 I turn to Dr Lee's diagnosis that the accused had expressive dysphasia. This was based on the DVA finding of January 2014, as well as interviews and neuropsychological tests conducted almost three years after the incident. This is at odds with Dr Phang's assessment. However, Dr Phang's assessment, as mentioned in his report, has two advantages over that of Dr Lee. First, it was more contemporaneous. Dr Phang interviewed the accused on four different occasions for a total of about seven-and-a-half hours but he did not observe the habit of spelling words. Dr Lee on the other hand observed a few instances where the accused spelt words. I should add here that while giving evidence, the accused also spelt out certain words, and appeared to have some difficulty expressing himself. There seemed to be no explanation for why the accused subsequently developed this habit of spelling words instead of speaking them. However, since the relevant inquiry was into the accused's mental condition at the time of the offence, I preferred Dr Phang's account as it was far more

contemporaneous. Second, Dr Phang spoke to the accused in English (on the first two occasions) and Tamil (on the latter two occasions through an interpreter). Dr Lee only spoke to the accused in English. Dr Phang had the benefit of observing the accused's speech in both languages in which he was capable of expressing himself, and did not observe any speech difficulties apart from stuttering.

83 Even if Dr Lee's report were to be relied on, I found that his diagnosis did not cast any doubt on Dr Phang's findings as at January 2014. Expressive dysphasia, as both Dr Phang and Dr Lee agree, is a significant impairment. As I highlighted at [45], Dr Phang explained that the speech of a person with expressive dysphasia would be markedly different from that of a normal person. Dr Lee did not fully align himself with Dr Phang's description, but accepted at least that expressive dysphasia meant a person would have difficulty putting his ideas and thoughts into words. My understanding, as informed by the experts' opinions, was that one would expect a person with expressive dysphasia to have problems articulating proper sentences and being understood. It would be a condition immediately noticeable by anyone interacting with that person.

84 On the available evidence, the accused did not seem to have this problem at the material time. It was telling that other people who were familiar to the accused could not remember any instance where the accused had such problems expressing himself. Parmeswary, his wife who had known him since 2011, could not recall any such instance. Siva, his friend, recalled that the accused could not speak properly in the sense that he would stutter, but nothing more serious than that. Once the experts' views were tested against such objective evidence, it seemed apparent that Dr Phang's assessment that the accused did not suffer from expressive dysphasia should be preferred over Dr Lee's.

85 Therefore, I found that at the time of the incident, the accused did not have expressive dysphasia. In any case, I also found that on its own, expressive dysphasia – which is a speech impediment – would not have affected the accused's executive functioning in any way. The inability to speak properly would not have affected his control over his decisions.

Deficits in executive functioning

86 Leaving aside the issue of verbal fluency (which, like expressive dysphasia, really had no impact on the accused's executive functioning – see the opinion of Dr Gwee highlighted at [47]), the key observation by Dr Woo was that there were significant deficits in "problem solving" and "inhibition" (see [40] above). Dr Lee shared the view, and expressed this in terms of an opinion that the accused might have shown signs of perseveration on the day of the incident, and was not capable of "knowing where to stop."

87 Dr Gwee doubted Dr Woo's findings, especially the finding of "inhibition" based on the WSCT (see [47] above). Dr Phang also expressed reservations about the findings. Dr Phang based these reservations on fact that the accused had been able to make the "purpose-driven" journey from Johor Bahru to Yishun; that he had been able to entreat the deceased to lend him money; that he had been able to wait until the deceased was in the toilet before searching the flat for valuables; and that he was then able to search the flat systematically for valuables. Even the accused's suffocating of the deceased did not indicate any deficits in executive functioning; this was meant to silence the deceased and was, as Dr Phang described, a "very practical, purposeful act".

88 Given that the accused strangled and suffocated the accused with force and over considerable time as described above, I found that the deficits in problem solving, inhibition and impulsivity, even if present, did not detract from

the key finding that the accused formed and had the intention to kill the deceased. Therefore, I saw no need to make a finding on the presence of executive deficits when deciding whether to convict the accused.

Conclusion

89 In conclusion, I found that the accused possessed the intention to cause the deceased's death. Given that the charge had been established beyond a reasonable doubt by the Prosecution, I convicted him of the charge. I was prepared, however, in the sentencing process, to consider afresh whether the executive deficits pertaining to problem solving, inhibition and impulsivity ("the executive deficits") were present at the time of the offence, and if present, whether they would be of mitigating value. Hence, I asked the parties to address me on this in their submissions on sentence.

Decision on sentence

90 As set out above at [51], the prescribed punishment under s 304(*a*) of the Penal Code for culpable homicide, where an accused person had the intention of causing the death of the deceased, is (a) life imprisonment, with liability for caning; or (b) imprisonment for a term which may extend to 20 years, with liability for a fine or caning.

Parties' positions

91 I highlight four main aspects of the Prosecution's submissions. First, the Prosecution pressed for the maximum sentence of life imprisonment on the basis that the present case fell within the range of the worst type of cases of culpable homicide. The case was within the range of the worst type of cases because (a) there was a calculated decision to kill the deceased, (b) the deceased was a

vulnerable victim, (c) the accused had abused the deceased's trust, (d) the deceased suffered a vicious attack, and (e) the accused was motivated by greed.

92 Second, the Prosecution also highlighted the accused's criminal record. The accused had eight previous convictions:

(a) On 8 July 1991, he was convicted of two counts of rape under s 376(1) of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code 1985"), with ten counts of rape under s 376(1) taken into consideration. He was sentenced to five years' imprisonment and three strokes of the cane per charge, making the total sentence five years' imprisonment and six strokes of the cane.

(b) On 27 December 1994, he was convicted of one count of doing an obscene act under s 294 of the Penal Code 1985. He was sentenced to one month's imprisonment.

(c) On 4 September 1995, he was convicted of one count of theft under s 379 of the Penal Code 1985. He was given a $1,000 fine.

(d) On 16 June 2000, he was convicted of one count of theft in dwelling under s 380 of the Penal Code 1985. He was sentenced to two months' imprisonment.

(e) On 3 December 2003, he was convicted of one count of theft in dwelling under s 380 of the Penal Code 1985. He was sentenced to five months' imprisonment.

(f) On 25 August 2004, he was convicted of one count of theft in dwelling under s 380 of the Penal Code 1985. He was sentenced to nine months' imprisonment.

(g) On 29 January 2007, he was convicted of (i) two counts of armed robbery under s 392 read with s 397 of the Penal Code 1985, and sentenced to three years' imprisonment and 12 strokes of the cane per charge, and (ii) one count of carrying an offensive weapon, an offence under s 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Rev Ed), for which he was sentenced to six months' imprisonment. The total sentence was six years' imprisonment and 24 strokes of the cane. There were two other counts of armed robbery taken into consideration for the purpose of sentencing.

(h) On 23 May 2013, he was convicted of one count of theft in dwelling under s 380 of the Penal Code. He was sentenced to six weeks' imprisonment.

The Prosecution therefore submitted that the accused had a proclivity towards property and violent offences that justified a sentence of life imprisonment.

93 Third, the Prosecution submitted that the accused had failed to prove on a balance of probabilities that he suffered from a mental condition which affected his capacity for self-control at the time of his criminal act.

94 Fourth, given that the accused was 50 years of age by the time of sentencing and was not liable for caning, the Prosecution urged the court to impose an additional term of imprisonment of six months in lieu of caning.

95 In response, the Defence argued, first, that this was not a case which warranted a life imprisonment term. In this connection, the Defence argued that the aggravating factors listed by the Prosecution – abuse of trust, the vulnerability of the victim, and greed as a motivating factor – were simply not made out on the present facts.

96 Second, the Defence argued that the accused's antecedents did not suggest a proclivity towards violence. Rather, most of his antecedents were for property-related offences. The rape charge was not a violent crime as it was statutory rape based on the "consent" of his underage girlfriend. The robbery offences involved the accused brandishing a chopper to make shop cashiers give him money but these were not, in the Defence's view, indicative of a tendency on his part towards actual violence.

97 Third, the Defence argued that the accused had proven, on a balance of probabilities, that he was suffering from the executive deficits and that there was a causal connection between the executive deficits and his commission of the offence. It urged the court to give due weight to this as a mitigating factor.

98 Based on sentencing precedents, the Defence urged the court to impose 12 to 14 years' imprisonment. It also contended that there was no ground to order imprisonment in lieu of caning.

Whether life imprisonment would be warranted

99 I disagreed with the Prosecution that the accused should be sentenced to life imprisonment. To attract the maximum sentence for any offence, a case has to be one of the worst type of cases for the offence, though it need not be the worst case imaginable (*Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 at [11]–[13]). Having considered the parties' submissions, I was of the view that the maximum sentence was not warranted for the following main reasons.

100 First, this was not a premeditated offence and did not involve planning on the part of the accused. The accused's decision to kill the deceased was made on the spur of the moment. Even when the deceased had caught him stealing the box of jewellery, he did not immediately attack her, but pleaded with her to lend

him the jewellery. It was only when she refused, said that she would inform Siva, and came closer to him that he turned violent by pushing her to the ground (see [16] above). As I have found at [72], the deceased would probably have been making some noise after that. The accused then found it necessary to silence her. That was when things took a wrong turn. Indeed, the Prosecution too seemed to implicitly echo this point: it was submitted that "[i]t was only when it was clear that [the deceased] would not let him get away, that the accused found it necessary to silence her".

101 I was not persuaded by the Prosecution's emphasis on the fact that the accused had first asked the deceased for a loan and took the opportunity, while she was in the toilet, to search the house for valuables. This did not establish any planning on his part to kill the deceased. It established, at the most, a plan to rob her. Although, as I said at [91], the Prosecution argued that there was a "calculated decision" to kill the deceased, it was not clear that the Prosecution meant by this that the *killing* was a premeditated act. Rather, the Prosecution was simply emphasising in this part of its submissions that once the accused had made up his mind to kill the deceased, he "never once wavered in his intent and effort to kill her" and saw through the killing with "sheer determination". In my view, this amounted to no more than saying that there was a deliberate intention to kill, which was the very *mens rea* of the charge. Therefore, I did not see how this could be said to be an aggravating factor. In the premises, and given my observation in the preceding paragraph, I found myself in agreement with the Defence's characterisation of the events as "a case of a robbery gone wrong" – and I should add, terribly and tragically wrong.

102 Second, I found that though the accused's acts were cruel, the cruelty involved was confined to the very acts which caused death. The Prosecution highlighted that the accused had used not one but two methods (strangulation

and suffocation) to kill the deceased, that he had kept at these acts for a prolonged period of time, and that he used a significant amount of force. It will be recalled that these were the same factors that indicated to me that the accused had the intention to kill the deceased (see [71(a)]–[71(c)] above). To my mind, these factors established the intention to kill, and no more. Causing a person's death intentionally is, by definition, a violent and cruel act. Without doubt, the accused's acts of prolonged strangulation and suffocation were vicious, and his conduct was not to be condoned. However, there was no exceptional cruelty, and certainly no *added* element of inhumaneness in the accused's conduct, which would have placed the case at the end of the spectrum as being one of the worst types of cases of culpable homicide.

103 Third, I disagreed with the Prosecution on the presence of the other aggravating factors. In particular, the accused had not abused the deceased's trust. He had initially sought to borrow money from the deceased. When she refused, he then tried to rob her – this set in motion a train of events which ended with him killing her. I agreed with the Defence that this was an opportunistic crime of theft which escalated in violence and severity based on the circumstances. Nor was greed his motivating force in committing the offence. He had first sought a loan, and as the robbery went wrong, he killed the deceased. I did not think this was a case where the accused had acted purely out of the interest to enrich himself. He had acted to fulfil a financial need. He needed money to make an instalment payment for the flat as he was staying in a rented room with his wife. It would be fair to say that this was not the direst form of need; it would not be of the sort that might persuade a court to extend sympathy to an accused person and regard it as a mitigating factor. All the same, it was not greed, and certainly it was not greed which led to the commission of the offence.

104 For these reasons, I did not think that the maximum sentence of life imprisonment was warranted. I now turn to consider what the appropriate length of imprisonment should be.

The appropriate length of sentence

105 At a general level, it was not disputed by the parties that the sentencing principles of deterrence and retribution were applicable in this case given the heinous nature of the accused's offence. Further, it was recognised that the facts of culpable homicide cases vary widely and there was no applicable benchmark sentence (see *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679 at [33]). Parties accepted that the appropriate sentence had to be arrived at by taking into account all the facts and circumstances of the case. In this regard, two circumstances were significant.

Executive deficits

106 The first was the accused's alleged executive deficits. In *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [33], the Court of Appeal reaffirmed the prevailing view that in determining the mitigating value to be attributed to an offender's mental condition, the court must first ask if the nature of the mental condition was such that the offender retained substantially the mental ability or capacity to control or restrain himself at the time of his criminal acts. If the answer was "yes" and the offender chose not to exercise self-control, the mental condition would be of little or no mitigating value. The question is whether the mental condition affects control and inhibition.

107 Based on the neuropsychological tests carried out by Dr Woo, I accepted that the accused had proved on a balance of probabilities that he suffered from the executive deficits at the time of the offence. As mentioned, Dr Woo

administered two tests, the WCST and the COWAT. I found the COWAT test result less germane. It suggested that the accused lacked verbal fluency. However, I did not think that a person's difficulties with expressing himself were relevant in determining whether his self-control or inhibition was affected; I alluded to this earlier at [86]. In this regard, I accepted Dr Gwee's explanation (see [47] above) that verbal fluency was not linked to executive functioning. Indeed, the Defence did not rely on the COWAT in its sentencing submissions to substantiate its argument about the accused's deficits in executive functioning.

108 What was more significant was the accused's performance on the WCST. As explained at [42], based on the WCST, the accused's perseveration error score was within the severely impaired range. As Dr Woo noted, the results were seven standard deviations below the mean when three standard deviations below the mean would have been sufficient for a finding that he was severely impaired. With respect, I did not think Dr Gwee's criticism about the accuracy of the WCST as an indicator of the accused's lack of self-control or inhibition (see [47] above) was persuasive. Dr Gwee suggested that the accused might have performed poorly on the WCST because he did not have the abstract reasoning skills needed to understand what was required of him. However, Dr Woo gave evidence that the accused clearly understood the test. Dr Woo heard the accused trying to verbalise his thoughts about what the correct sorting principle should be. Therefore, I was unable to give much weight to Dr Gwee's contention that the accused's poor performance was attributable to other domains other than perseveration.

109 I acknowledged Dr Phang's disagreement with Dr Woo's assessment that the accused had defects in inhibition and problem-solving. Dr Phang based this on his understanding of the accused's behaviour on the day of the incident

(see [87] above). However, and with respect, I preferred the view of the Defence's expert witnesses for two reasons. First, neither Dr Phang, nor any of the Prosecution's expert witnesses for that matter, had performed similar tests of executive functioning to show that the accused had no deficits. Although such test results were only, in Dr Phang's words, "complementary but not decisive", in so far as proof on a balance of probabilities was concerned, given the disagreement between the Prosecution's and Defence's expert witnesses, the fact that the Defence had adduced such test results (the reliability of which was not sufficiently undermined by the Prosecution) did tip the scales in its favour.

110 Second, Dr Phang accepted in cross-examination that the acid test of a person's executive functioning was in times of stress, and that it was in such stressful times that a person's impairment in executive functioning might lead him to make a decision that he might not otherwise make. Dr Phang's judgment that the accused did not suffer from the executive deficits was based largely on the accused's conduct before he had been caught by the deceased in the act of trying to steal the jewellery box. However, it seemed to me that those actions would be less relevant as indicators of deficits in executive functioning than the actions of the accused when he found himself in a stressful situation, namely when he was caught by the deceased in the act of stealing. As Dr Lee mentioned, that was precisely the time when deficits in executive functioning would manifest themselves, especially in a person of lower intellect.

111 As for Dr Phang's characterisation of the suffocation of the deceased as a practical and purposeful act, I did not find that wholly accurate. As I stated earlier at [100], this was not a prearranged crime. The accused was caught red-handed and to prevent the deceased from shouting, the accused silenced her by killing her. Here, it is relevant again to assess the experts' evidence against the facts. Dr Lee's assessment that the accused had executive deficits which

manifested themselves when he was caught stealing seemed more consistent with the accused's account, in his statements, of his reaction to being caught. The accused's statements revealed that he might have acted the way he did because he was fixated on trying to solve his "money problem" (see [17] and [21]).

112 On the whole, I accepted that the accused formed the intention to kill, and acted on that intention, but in my judgment he suffered from executive deficits which caused him to act impulsively in deciding to kill the deceased. Due to these executive deficits, his capacity to control himself was affected. In other words, his focus on trying to obtain the jewellery got the better of him and he then decided, on the spur of the moment, to kill the deceased. In determining the appropriate length of the sentence, I took this into account as a mitigating factor. However, I should stress that this did not cause me to doubt my earlier finding that the accused had the intention to kill the deceased. In my judgment, the decision to kill was made impulsively but the act of killing was done intentionally.

Antecedents

113 Turning to the accused's lengthy criminal record, I agreed with the Prosecution that it was of concern, and justified the imposition of a stiff sentence in the interest of specific deterrence. In particular, the accused committed a series of robbery offences in 2007. Based on the charges tendered against him for those offences (copies of which the Prosecution furnished to the court at my request), it was clear that those were also violent crimes: the accused had committed the robberies by threatening to use such weapons as choppers, knives and *parangs*. It seemed to me that the accused had not been deterred by the relatively stiff sentence of six years' imprisonment and 24 strokes of the cane

imposed on 29 January 2007 for that string of offences. A sufficiently long sentence was needed to deter him from committing violent crimes again.

114 In addition, the accused had a long string of property-related offences. In the present case, arising from his financial desperation, he yet again took to robbery. Although the crime the accused was charged with was not robbery but culpable homicide, he would not have committed the act of killing had he not first formed the intention to rob the deceased. I found therefore that due weight had to be given to the accused's propensity to commit offences arising from his financial needs, and that this too pointed towards a sufficiently long sentence in the interest of deterrence.

Sentencing precedents

115 Having made those two observations, I then turned to consider what the appropriate sentence should be based on the sentencing precedents cited by the parties. As a preliminary matter, I noted that in all but one of the following six cases I examined, the offenders faced charges for causing death by doing an act with the intention to cause such bodily injury as was likely to cause death – *ie*, the second *mens rea* limb under s 299 of the Penal Code. The one exception is *Public Prosecutor v Dewi Sukowati* [2017] 1 SLR 450 ("*Dewi Sukowati*"), where the accused was charged for causing death by doing an act with the intention of causing death – *ie*, the first *mens rea* limb. Nonetheless, I did not think the difference in the charges framed detracted from the relevance of the precedents cited, since under s 304(*a*) of the Penal Code, the same sentencing range is prescribed for both limbs.

116 I was of the view that a sentence longer than that of 14 to 15 years' imprisonment, as imposed in the following three cases cited by Defence Counsel, was warranted.

(a) In *Public Prosecutor v Tan Teck Soon* [2011] SGHC 137 ("*Tan Teck Soon*"), the 19-year-old offender caused the death of his 20-year-old lover by pushing her over a parapet after a quarrel. The court accepted that the offender's act was not premeditated but carried out on impulse and took this into consideration in deciding not to impose a sentence of 20 years' imprisonment but a sentence of 14 years' imprisonment instead (at [11]). The offender pleaded guilty, and had no criminal record.

(b) In *Public Prosecutor v Tan Keng Huat* (Criminal Case No 25 of 2011, unreported) ("*Tan Keng Huat*"), the 34-year-old offender killed the deceased by stabbing the latter's chest and slashing his cheek twice. The killing was essentially an act of retaliation in response to an altercation between the offender's brother and the deceased at a neighbourhood void deck, in which the deceased beat up the offender's brother. The offender pleaded guilty, and was found not to have any mental condition. He was sentenced to 15 years' imprisonment and 12 strokes of the cane. The court noted that he had a history of prior convictions but not a history of violent crime.

(c) In *Public Prosecutor v Sumanthiran s/o Selvarajoo* [2017] 3 SLR 879 ("*Sumanthiran*"), the 18-year-old offender had attacked an elderly man (64 years of age) who was chanting prayers in a park. This was entirely unprovoked. The offender claimed he was irritated at the sight of the elderly man praying and punched him in the face several times, killing him. He was sentenced to 14 years' imprisonment and eight strokes of the cane. The offender did not have any previous convictions, but was sentenced for the culpable homicide offence

together with three other offences involving violence committed in the preceding year or so. He was a young offender who pleaded guilty.

117 Broadly speaking, the culpability of the accused here was comparable to that in *Tan Teck Soon* and *Sumanthiran,* in that the acts were committed on impulse and were not premeditated. However, the offenders in these cases were young, and did not have any criminal records. While the offender in *Tan Keng Huat* appeared to have acted with a degree of pre-planning, he had non-violent criminal records. Further, the offenders in all three cases above pleaded guilty which would have been a mitigating factor. Therefore, there was sufficient basis for me to conclude that the term of imprisonment imposed on the accused should be longer than that in those cases.

118 I was further of the view that a sentence which was in line with the sentences of 18 to 20 years' imprisonment, as was imposed in the following three cases cited by the Prosecution, was warranted.

(a) In *Dewi Sukowati*, the 18-year-old offender was a domestic helper and the deceased was her employer. The deceased splashed water at the offender's face when the offender had brought her a glass of water, and scolded the offender as well. The offender suddenly grabbed hold of the deceased's hair and swung her head against the wall. In an attempt to cover up her act, the offender then decided to drown her in the swimming pool. At [20] of its judgment, the Court of Appeal noted that (i) the initial assault occurred because of a loss of control – the psychiatric evidence showed that the offender was suffering from acute stress reaction, but (ii) the further injuries were inflicted by the offender in an attempt to ensure that the deceased would die so that she would not be able to report the assault; these acts were premeditated and

deliberate. The Court affirmed the sentence of 18 years' imprisonment imposed by the High Court.

(b) In *Public Prosecutor v Nurhayati* (Criminal Case No 29 of 2012, unreported), the offender was a 16-year-old domestic helper who caused the death of her employer's 12-year-old daughter. She was angry with her employer for reprimanding her frequently and decided to kill the daughter in revenge. She carried the daughter to the 16th floor of the building and pushed her over the parapet. She even concocted a story that the deceased had been kidnapped by two men and claimed to have been raped by them herself. It was found that she had adjustment disorder and depressed mood but these did not affect her ability to form a rational judgment or to exercise willpower to control physical acts. She was sentenced to 20 years' imprisonment.

(c) In *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 669, the offender was a 16-year-old domestic helper who caused the death of her 87-year-old employer. After the employer had reprimanded and insulted the offender, the offender became angry and killed the employer by smothering her with a pillow. She sought to mask her crime by attempting to make it seem that the deceased had died from slipping and falling. The offender was not diagnosed with any mental illness. She was sentenced to 20 years' imprisonment.

119 The offenders in these three cases were young domestic helpers who had planned the killings of their employers or employers' family members. The acts were clearly premeditated. The accused's culpability was lower since his act was not a premeditated one, as I have found. On the other hand, the offenders in the above three cases pleaded guilty, had no criminal records, and either had

some mental illness or faced some form of pressure in the course of work. Here, the accused claimed trial (thus showing a lack of remorse) and had a criminal record which included violent crime. Given his deficits in executive functioning that led him to commit the offence, I decided that a sentence on the lower end of the range of 18 to 20 years would be appropriate.

The sentence imposed

120 Weighing all the facts and circumstances of the case, and applying the principles of deterrence and retribution, I decided to impose a sentence of 18 years' imprisonment with effect from 17 December 2013, the date the accused was placed in remand. This stiff sentence was to punish the accused for a heinous crime in which he unnecessarily took away a life, to deter him from committing further offences and to serve as a general signal that such acts are not to be condoned. Given the substantial length of the imprisonment term, I saw no reason to impose a further term of imprisonment in lieu of caning, as pressed for by the Prosecution. I was fortified in this view by the decision of the High Court released after I had imposed the sentence on the accused: *Amin bin Abdullah v Public Prosecutor* [2017] SGHC 215. There, the High Court held that the starting point should be that no enhancement of a sentence in lieu of caning should be ordered unless there are grounds to do so (at [87]).

Conclusion

121 For the reasons given, I convicted the accused on the charge he faced and imposed the sentence of 18 years' imprisonment with effect from 17 December 2013.

Hoo Sheau Peng
Judge

Wong Kok Weng, Kelly Ho Yan-Qing and Joshua Rene Jeyaraj (Attorney-General's Chambers) for the Public Prosecutor;
Derek Kang Yu Hsien (Ho & Wee LLP), Amogh Nallan Chakravarti (Dentons Rodyk & Davidson LLP) and Chong Yi Mei (Patrick Ong Law LLC) for the accused.