IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 10

Criminal Appeal No 36 of 2020

Between

Teo Ghim Heng

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Murder]
[Constitutional Law] — [Attorney-General] — [Prosecutorial discretion]
[Constitutional Law] — [Equality before the law]

Teo Ghim Heng
v
Public Prosecutor

[2022] SGCA 10

Court of Appeal — Criminal Appeal No 36 of 2020
Sundaresh Menon CJ, Judith Prakash JCA, Steven Chong JCA, Belinda Ang Saw Ean JAD, Chao Hick Tin SJ
13 October 2021

23 February 2022 Judgment reserved.

Judith Prakash JCA (delivering the judgment of the court):

Introduction

1 This is an appeal by Teo Ghim Heng (the "appellant") who was convicted in the High Court of the murder of his wife, Choong Pei Shan ("Pei Shan"), and his daughter, Teo Zi Ning ("Zi Ning"). In convicting the appellant, the court found that he had not made out the defences of diminished responsibility and grave and sudden provocation which he had put out. The Judge further rejected the appellant's argument that the statutory provisions under which he was charged were unconstitutional for being in violation of the separation of powers doctrine and/or in contravention of Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the "Constitution").

2 For the reasons that follow, we dismiss the appeal.

Facts

3 The facts pertaining to the appellant's alleged offences are largely undisputed and are set out in comprehensive detail in the judgment of the High Court Judge (the "Judge") in *Public Prosecutor v Teo Ghim Heng (Zhang Jinxing)* [2021] SGHC 13 (the "Judgment"). For present purposes, it will suffice for us to briefly recapitulate the facts which are material to the present appeal. It should be recognised that the account of the crimes and the appellant's motivations come largely from the appellant himself, as there were no witnesses to what happened.

4 The appellant was the sole breadwinner of his family. Prior to 2015, he had been a successful property agent, earning (on his own account) a five-figure monthly income. However, from 2015 onwards, a downturn in the property market caused the appellant's income to decline significantly. Despite this, the appellant's family's expenses remained high and the appellant, who was an avid gambler, continued to spend a few hundred dollars a week on gambling. As a result, the appellant quickly depleted his savings and had to resort to borrowing money from his friends, colleagues and various financial institutions in order to meet his family's expenses.

5 In October 2016, the appellant joined an interior design firm, Carpentry Design Works Pte Ltd ("CDW"), where he worked as a sales coordinator under the supervision of Mr Lim Zi Jian, Jordan ("Mr Lim"). The appellant earned a monthly salary of about $1,500 at CDW and continued to work part time as a property agent. Notwithstanding his efforts, the appellant continued to accumulate debts and, by the end of 2016, owed his creditors at least $120,000.

6 On 19 January 2017, the principal of the playschool that Zi Ning attended sent the appellant a text message requesting payment of Zi Ning's overdue school fees amounting to $1,700. The appellant felt vexed by this request as he did not have the ability to pay the overdue fees. The next morning, when Pei Shan, Zi Ning and the appellant were sitting together in the master bedroom of their flat (the "Flat"), the appellant informed Pei Shan that he did not wish to send Zi Ning to school that day as her school fees were overdue and he was worried that she might be asked to leave the school, which would be "very embarrassing". This enraged Pei Shan, who started berating the appellant for being a "useless" father and husband.

7 The appellant averred that upon hearing this, his mind became a "complete blank". The appellant proceeded to retrieve a bath towel from the bathroom, loop it around Pei Shan's neck, and pull it tightly at the ends to strangle her. After about five minutes, the appellant's mind cleared, but he continued strangling Pei Shan. The appellant claimed that he had done so with the intention of killing his entire family and then committing suicide thereafter, as he felt that there was no way for his family to repay the debts that he owed. After about 15 minutes, the appellant let go of the bath towel and strangled Pei Shan with his bare hands until she stopped breathing completely. At the time of her death, Pei Shan was pregnant with her and the appellant's second child.

8 The appellant then considered whether to kill Zi Ning as well. He reasoned that, with her parents gone, Zi Ning would not have anyone to take care of her. He also did not want to leave Zi Ning behind to suffer the consequences of the debts that he owed. As such, the appellant asked Zi Ning to sit down in front of him, with her back facing him. When Zi Ning complied, the appellant looped the same bath towel around Zi Ning's neck and pulled both

ends of the towel to strangle her. After about 10 to 15 minutes, the appellant released the bath towel and strangled Zi Ning with his bare hands until she, too, stopped breathing completely.

9 Immediately after killing Pei Shan and Zi Ning, and in the days that followed, the appellant allegedly contemplated or attempted suicide on various occasions:

(a) On 20 January 2017, after strangling Pei Shan and Zi Ning, the appellant attempted suicide by slitting his wrists with a penknife. However, this attempt was unsuccessful as the cuts were not deep enough.

(b) Later that same day, the appellant decided to commit suicide by overdosing on Panadol. The appellant consumed 20 Panadol pills before lying on the bed next to Pei Shan's and Zi Ning's bodies. However, this attempt was also unsuccessful.

(c) On 21 January 2017, the appellant decided to commit suicide by consuming rat poison and went out to buy the poison. However, he was unable to purchase it and returned home empty-handed. The appellant then resolved to commit suicide by jumping to his death the next day. The next day, however, he failed to go through with this plan.

(d) On 24 January 2017, the appellant again contemplated committing suicide by jumping, but put it off again as he did not have the courage to jump.

(e) On 25 January 2017, the appellant attempted suicide by consuming 105 Panadol tablets. He vomited and lay down hoping to pass away in his sleep but woke up at about 9.00am the next day.

(f) On 26 January 2017, the appellant attempted to slit his left wrist again using a penknife blade, but his wound stopped bleeding after a while. On the same day, the appellant sprayed a large quantity of insecticide into his water and drank the mixture. He suffered from diarrhoea but did not die.

(g) On the morning of 28 January 2017, the appellant resolved to burn Pei Shan's and Zi Ning's bodies, immolating himself in the process. However, after pouring thinner on the blanket and setting the blanket on fire, the appellant "chickened out" and got out of the bed as he found the heat "unbearable". Thereafter, the appellant formulated a plan to drown himself in the sea at Sembawang Park, but again failed to see this plan through to completion.

10 The appellant also employed different tactics to avoid the various individuals who attempted to communicate with or look for the appellant, Pei Shan and Zi Ning. These tactics included the following:

(a) switching off his handphone and using Pei Shan's handphone instead so that his creditors could not contact him;

(b) informing Zi Ning's teacher that Zi Ning could not attend school as she was not feeling well;

(c) making excuses as to why he and his family could not attend family dinners with his parents and parents-in-law;

(d) pretending that he was not at home when his CDW colleagues visited his house to look for him; and

(e) accessing Pei Shan's Facebook and changing her cover photo, thereby giving the impression that she was active on social media.

11 Between the killings and his arrest, the appellant spent the rest of his time in the Flat watching television and YouTube videos, playing games on his handphone, consuming pornography on the Internet, surfing the Internet on methods of committing suicide, and smoking in the study.

12 Pei Shan's and Zi Ning's deaths were finally discovered on the evening of 28 January 2017. On that day, Pei Shan's brother, Choong Mun Chen ("Mr Choong"), and Mr Choong's brother-in-law paid a visit to the Flat, whereupon they noticed a pungent odour coming from the windows of the Flat. Mr Choong called the police and the appellant was arrested shortly thereafter. He was ultimately charged with two counts of murder under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC").

The parties' cases below

13 In the proceedings below, the appellant accepted that the elements of the offence of murder under s 300(*a*) of the PC had been satisfied in relation to both of the charges against him, but relied on two exceptions to murder under s 300 of the PC, namely, Exception 1 (provocation) and Exception 7 (diminished responsibility). On diminished responsibility, it was argued that the appellant had been suffering from an abnormality of mind arising from moderate Major Depressive Disorder ("MDD") which substantially impaired his responsibility for his acts of killing Pei Shan and Zi Ning. On provocation, it was asserted that

the appellant had lost self-control as a result of the words uttered by Pei Shan immediately before he killed her and Zi Ning.

14 The Prosecution submitted that neither exception applied. First, the appellant could not avail himself of the defence of diminished responsibility as he had not been suffering from MDD at the material time. Secondly, the appellant could not rely on the defence of provocation, as the alleged provocation by Pei Shan was neither grave nor sudden, and the manner in which the appellant had killed her and Zi Ning demonstrated that he had not lost self-control.

15 Aside from raising the abovementioned defences to murder, the appellant also challenged the constitutionality of ss 299 and 300(*a*) of the PC on the grounds that they: (a) offended the separation of powers doctrine by permitting the Prosecution to encroach into the judiciary's sentencing powers; and (b) were inconsistent with Art 12(1) of the Constitution. The Prosecution responded that neither of these challenges was legally sustainable.

The decision below

16 The Judge rejected the appellant's defences of diminished responsibility and provocation.

17 On diminished responsibility, the Judge held that the primary issue was whether the appellant had been suffering from moderate MDD at the material time (Judgment at [78]). The Judge noted that, although this issue was a matter of expert medical evidence, the court was entitled to assess whether the "bedrock of facts" upon which the medical evidence was based had been properly established (at [89]). In the present case, the appellant had showed

"clear and dishonest thinking" on several occasions (at [107]–[108]). As such, it was necessary to approach the analysis of the appellant's symptoms bearing in mind that the appellant's self-reported symptoms ought, as far as possible, to be supported by objective evidence (at [112]).

18 The Judge then turned to evaluate the psychiatric evidence with reference to the diagnostic criteria for MDD as set out in the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association Publishing, 5th Ed, 2013) ("DSM-V"). The Judge found that the appellant had not satisfied the DSM-V criteria at the time of his offences and, accordingly, could not have been suffering from moderate MDD then (at [192]). Consequently, the appellant could not avail himself of the defence of diminished responsibility (at [193]).

19 On provocation, the Judge noted that although the appellant had initially "snapped" when Pei Shan had berated him in Zi Ning's presence, his mind had cleared five minutes into strangling Pei Shan with the towel. The appellant had also been in full control of his faculties when he was strangling Zi Ning. Accordingly, the defence of provocation likewise failed (at [198] and [204]–[205]).

20 The Judge was also of the view that the appellant's constitutional challenges were without merit. First, contrary to the appellant's arguments, the Prosecution was exercising prosecutorial discretion in choosing whether an accused person ought to be charged under ss 299 or 300(*a*) of the PC. This exercise of discretion was enshrined in the Constitution and was not a delegation of judicial power. Although ss 299 and 300(*a*) were indeed overlapping, this did not *ipso facto* mean that they were obsolete or unconstitutional. By charging the

accused and bringing him before the court to be tried, the Prosecution was simply doing exactly what the executive was designed to do (at [212]–[216]).

21 Similarly, the mere coexistence of ss 299 and 300(*a*) of the PC could not constitute a breach of Art 12, as it was not an *act* of discrimination to begin with (at [223]). Although overlapping penal provisions could create the *possibility* of discriminatory outcomes, this hinged on how the Prosecution made its choice when exercising prosecutorial discretion; the mere *existence* of overlapping penal provisions was not unconstitutional (at [224]–[225]). The appellant's application of the reasonable classification test also presented difficulties, because that test had previously only been applied to cases where a *single* piece of legislation, by its terms, purported to discriminate between different groups or individuals. As such, the appellant's argument that ss 299 and 300(*a*) were in contravention of Art 12 could not stand (at [227]–[228]).

Parties' cases on appeal

22 The appellant's arguments on appeal largely mirror his arguments below, save that he is no longer pursuing the defence of provocation. In so far as the defence of diminished responsibility is concerned, the appellant contends that the Judge erred in concluding that he was not suffering from MDD at the time of the offences. In particular, the Judge gave insufficient weight to the appellant's self-reported symptoms in his assessment of whether the DSM-V criteria had been made out. The appellant further maintains that ss 299 and 300(*a*) of the PC are unconstitutional because (a) they "effectively enabl[e] [the Public Prosecutor] to determine the sentence to be imposed", and (b) there is no *intelligible differentia* between offences or offenders charged under these provisions.

23 The Prosecution, for its part, asserts that the Judge correctly found that the defence of diminished responsibility was not made out as the appellant's self-reported symptoms were both internally and externally inconsistent. The Judge also rightly accepted that ss 299 and 300(*a*) of the PC were constitutional. These provisions do not undermine the separation of powers principle as they do not "effectively enable" the Public Prosecutor to select the sentence to be imposed on an offender. Moreover, they are individually non-discriminatory in nature and therefore cannot be said to violate Art 12(1) of the Constitution.

Issues to be determined

24 Based on the above, the issues before this Court are as follows:

(a) Was the defence of diminished responsibility made out?

(b) Are ss 299 and 300(*a*) of the PC unconstitutional on the basis that they offend the separation of powers doctrine and/or contravene Art 12 of the Constitution?

25 We examine these issues in turn.

Whether the defence of diminished responsibility was made out

26 The partial defence of diminished responsibility is set out under Exception 7 to s 300 of the PC. At the time of the appellant's offences, Exception 7 stated as follows:

> *Exception 7.*—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.

27 In order to make out the defence of diminished responsibility, the appellant must prove the following on a balance of probabilities (see *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 at [21] and *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 ("*Ong Pang Siew*") at [58]):

(a) the appellant was suffering from an abnormality of mind;

(b) such abnormality of mind arose from a condition of arrested or retarded development of mind or inherent causes, or was induced by disease or injury; and

(c) the abnormality of mind substantially impaired the appellant's mental responsibility for the acts which had caused the deaths of Pei Shan and Zi Ning.

28 As the Judge noted, the "central plank" of the appellant's diminished responsibility defence was that he was suffering from moderate MDD – being a "disease" within the meaning of limb (b) above – at the time of his alleged offences. The appellant's ability to satisfy the other two limbs of the diminished responsibility defence was essentially contingent on his ability to prove this fact. It is therefore this issue to which we first turn.

Whether the appellant suffered from MDD

Parties' positions

29 The Prosecution's position is that the appellant was not suffering from MDD when he killed Pei Shan and Zi Ning. In this connection, the Prosecution relies primarily on the evidence of Dr Yeo Chen Kuan Derrick ("Dr Yeo"), a Consultant with the Department of Forensic Psychiatry of the Institute of Mental Health. Dr Yeo prepared two reports which were dated 21 April 2017 ("Dr Yeo's First Report") and 15 March 2019 ("Dr Yeo's Second Report") respectively. In preparing these reports, Dr Yeo had personally examined the appellant and conducted interviews with:

(a) the appellant's relatives;

(b) Mdm Husniyati binte Omar ("Mdm Husniyati"), who was the appellant's director at CDW; and

(c) the appellant's former colleagues, Mr Dickson Pang ("Mr Pang") and Mr Jeremy Peh Eng Kuan ("Mr Peh").

30 The Prosecution also relies on the evidence given by Dr Stephen Phang Boon Chye ("Dr Phang"), who the Prosecution called as a rebuttal witness, on the following issues: (a) the proper assessment protocol for forensic psychiatric examinations; (b) the correct interpretation of the DSM-V criteria; and (c) the meaning of certain terms used in the psychiatric reports, such as "masked depression" and "abnormal". Dr Phang did not personally examine the appellant.

31 The appellant, for his part, contends that he suffered from moderate MDD *before*, *during* and *after* killing Pei Shan and Zi Ning. In support of this position, the appellant relies primarily on the evidence given by Dr Jacob Rajesh ("Dr Rajesh"), who is a Senior Consultant Psychiatrist with Promises (Winslow) Clinic and the Singapore Prisons Service, and a Visiting Consultant Psychiatrist with the Department of Psychology Medicine at the National University Hospital. Dr Rajesh also prepared two reports, dated 19 October 2018 ("Dr Rajesh's First Report") and 7 May 2019 ("Dr Rajesh's Second Report") respectively. Like Dr Yeo, Dr Rajesh had personally examined the appellant. He had also conducted interviews with Mdm Husniyati, Mr Pang and the appellant's relatives.

32 Both parties also rely, albeit only tangentially, on the evidence given by Dr Ong Pui Sim ("Dr Ong"), a Consultant Psychiatrist at Changi General Hospital ("CGH"), who provisionally diagnosed the appellant as having "depression with homicidal act and persistent suicidal intent" after assessing him once on 31 January 2017, three days after his arrest.

33 In arriving at their respective diagnoses of the appellant, Dr Yeo, Dr Rajesh and Dr Ong all utilised the DSM-V criteria, which provides, in material part, as follows:

> **Major Depressive Disorder**
>
> Diagnostic Criteria
>
> A. Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.
>
> …

1. Depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful). …

2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).

3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day. …

4. Insomnia or hypersomnia nearly every day.

5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).

6. Fatigue or loss of energy nearly every day.

7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).

8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).

9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

B. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

C. The episode is not attributable to the physiological effects of a substance or to another medical condition.

Note: Criteria A–C represent a major depressive episode.

…

D. The occurrence of the major depressive episode is not better explained by schizoaffective disorder, schizophrenia, schizophreniform disorder, delusional disorder, or other

> specified and unspecified schizophrenia spectrum and other psychotic disorders.
>
> E. There has never been a manic episode or a hypomanic episode.

34 The DSM-V also sets out some general guidelines for the application of the diagnostic features set out above. These include the following:

> (a) The criterion symptoms for MDD must be present *nearly every day* to be considered present, with the exception of Criterion A4 (weight change) and Criterion A9 (suicidal ideation). Criterion A1 (depressed mood) must be present for most of the day, in addition to being present nearly every day.
>
> (b) The essential feature of a MDD episode is a period of at least *two weeks*, during which there is either depressed mood or the loss of interest or pleasure in nearly all activities.
>
> (c) The episode must be accompanied by clinically significant distress, or impairment in social, occupational or other important areas of functioning. For some individuals with milder episodes, functioning may *appear* to be normal but requires *markedly increased effort.*

35 Aside from relying on the DSM-V criteria, the expert witnesses also made some references to the diagnostic criteria for MDD as set out in the *International Statistical Classification of Diseases and Related Health Problems* (2nd Ed, 10th Revision, 2004) maintained and published by the World Health Organisation ("ICD-10"). We will reproduce the relevant portions of ICD-10 criteria below as and where this is necessary.

Our approach to the assessment of expert medical evidence

36 We begin by making two preliminary observations in relation to our assessment of the expert medical evidence in the present case.

37 First, an appellate court will be slow to criticise a trial court's findings on expert evidence without good reason: see *Ong Pang Siew* at [38], quoting *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 ("*Sakthivel Punithavathi*") at [74]. As in all cases, intervention by the appellate court is warranted only where the trial judge's findings of fact can be shown to be plainly wrong or against the weight of the evidence: *Ong Pang Siew* at [65].

38 Secondly, we agree with the Judge that, in assessing and weighing expert medical evidence in general, it is necessary for the court to examine the underlying evidence and the analytical process by which the experts' conclusions are reached (see Judgment at [89] and *Kanagaratnam Nicholas Jens v Public Prosecutor* [2019] 5 SLR 887 at [2]). In undertaking this analysis, the court must consider "the cogency and the limits of the medical evidence complemented by, where appropriate, an understanding of human experience and common sense": *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [95].

39 Where the expert's medical opinion is based, whether in whole or in part, on an accused person's self-reported symptoms, the application of the above principles requires the court to carefully assess the accused person's self-reported symptoms in the light of "[a]dditional information from people who would ordinarily interact with the [accused person]", where available: *Ong Pang Siew* at [43]. One reason for this, as Dr Phang explained during his examination-in-chief, is that it is not uncommon for accused persons to

exaggerate or malinger symptoms in order to escape liability. Compounding this risk is the fact that the diagnostic criteria of many diseases and disorders are readily available through the Internet. Conversely, it is also possible that accused persons may downplay their symptoms or be in a state of denial: see *Ong Pang Siew* at [43]. Whatever the case may be, it is clear that an accused person may not always be the best source of information about his own physical and mental state.

40 The above notwithstanding, we accept that the diagnostic criteria for certain diseases and disorders may include symptoms which are, as a matter of logic, not easily observable by those who have interacted with the accused. For instance, Criterion A7 (feelings of worthlessness or guilt) and Criterion A9 (suicidal ideation) of the DSM-V criteria for MDD relate to thoughts or feelings which, if not outwardly expressed, may not be known to anyone apart from the accused. In our view, an accused person's self-reported account may assume greater importance in the court's assessment as to whether these particular symptoms have been made out, provided that such evidence is internally consistent and uncontradicted by the objective evidence on record.

41 We would further add that evidence of an individual's personality and character traits may, in appropriate circumstances, be relevant in determining the importance of corroborative evidence to the court's assessment of a medical diagnosis. This is particularly the case where less observable symptoms (such as Criterion A7 or A9 of the DSM-V criteria for MDD) are concerned. For instance, an accused who is generally reserved may be less inclined to share his or her suicidal thoughts with family members, friends, or acquaintances, which may explain their inability to corroborate the accused's evidence in that regard. However, vague allusions to certain personality traits of the accused would not

suffice to justify the absence of corroborative evidence. The accused would have to demonstrate, with specific reference to the expert and factual evidence on hand, whether those traits exist and if so, exactly why and how they ought to influence the court's analysis.

42 Bearing the above in mind, we turn to evaluate the Judge's findings on the expert evidence within the framework of the DSM-V criteria. Given that the application of Criteria C to E is not disputed in the present case, we need only consider Criteria A and B for the purposes of our analysis.

Criterion A

43 In so far as the expert evidence on Criterion A is concerned, we note that although Dr Yeo expressed some doubt about the reliability of the appellant's self-reported symptoms, he ultimately gave the appellant the benefit of the doubt by accepting that the appellant satisfied Criteria A1, A2, A3, A4 and A8 on the basis of his self-reported symptoms alone. Dr Yeo's conclusion that a diagnosis of MDD could not stand was solely predicated on his view that *Criterion B* had not been made out. As a result, the appellant's argument that he satisfied Criterion A was, strictly speaking, unchallenged by any of the experts before us.

44 However, in *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1, this Court stated (at [26], quoting *Halsbury's Laws of Singapore* vol 10 (Butterworths, 2000) at para 120.257) that "[t]he court is not obliged to accept expert evidence by reason only that it is unchallenged". Similarly, in *Sakthivel Punithavathi* at [76], V K Rajah JA opined that the court would not accept an expert's opinion – even if unchallenged – if it "fl[ew] in the face of proven extrinsic facts relevant to the matter". Consequently, the state of the expert

evidence did not preclude the Judge from making a finding that Criterion A had not been made out.

45 With the above principles in mind, we turn to examine the specific Criterion A symptoms which are disputed in the present case. As the appellant accepts that Criteria A2, A5 and A6 were not made out, we focus our analysis on Criteria A1, A3, A4 and A7–A9.

Criterion A1

46 Criterion A1 requires the appellant to have depressed mood "most of the day, nearly every day", as indicated by either subjective report or observation made by others.

47 The Judge found that Criterion A1 had not been made out as:

(a) The appellant's assertion that he had experienced depressed mood *prior* to the alleged offences was unsupported by the objective evidence, as well as the evidence of those who had interacted with him during that period (Judgment at [135]–[137]).

(b) The appellant's overall behaviour *after* the alleged offences was also inconsistent with his claim that his mood had been depressed at that time (at [139]).

(c) Dr Rajesh had accepted that Criterion A2 (markedly diminished interest or pleasure in daily activities for most of the day, nearly every day) had not been made out. As Criterion A2 was "closely intertwined" with Criterion A1, the absence of Criterion A2 symptoms reinforced the

finding that Criterion A1 symptoms were similarly not present (at [144]).

48 The appellant challenges the Judge's reasoning on three main fronts. First, the appellant submits that the Judge erred in preferring the evidence of Mr Lim, Mr Pang and the appellant's family and in-laws, who testified that they had not observed depressed mood on the part of the appellant, over the evidence of Mdm Husniyati and Mr Peh, who testified that they had noticed the appellant looking "depressed" or "down". The appellant asserts in particular that (a) Mr Lim's evidence was unreliable because he had "personal issues" with the appellant, and that (b) Mr Pang and Pei Shan's family had not interacted with the appellant frequently enough for their evidence to be of corroborative value. Secondly, the Judge placed too much weight on certain aspects of the evidence, such as the appellant's apparent affection towards Pei Shan and Zi Ning, his decision not to abort Pei Shan's foetus, and his determination to turn his career around. Thirdly, Dr Rajesh's concession that the appellant did not exhibit Criterion A2 symptoms should not have had any bearing on the Judge's assessment as to whether Criterion A1 had been made out.

49 In our judgment, the Judge did not err in relying on the evidence of Mr Lim, Mr Pang or the appellant's in-laws. The appellant's claim that Mr Lim had "personal issues" with the appellant is based primarily on Mdm Husniyati's evidence that she had "caught [Mr Lim and the appellant] quarrelling one time" over the appellant's debt to Mr Lim. However, this allegation, even if true, appears to relate to a one-off incident. Any suggestion that Mr Lim and the appellant shared a generally acrimonious relationship is not borne out by the rest of the evidence on record. Mr Lim characterised his own relationship with

the appellant as "fine", and there were no signs of acrimony between Mr Lim and the appellant in their WhatsApp conversations.

50 Furthermore, although Mr Pang, unlike Mr Lim, had not interacted with the appellant on a day-to-day basis, he had been in contact with him fairly regularly ("about once a month") since 2006 and had even met him in person on 13 January 2017, a week before the alleged offences. Likewise, it was Mr Choong's evidence that the appellant had attended family dinners with his in-laws around once a month ever since his marriage to Pei Shan in 2009. We agree with the Judge's view that these individuals, who had been acquainted with the appellant for a long period of time, would have been in a suitable position to assess if there had been any significant changes in the appellant's mood and behaviour in the months leading up to the alleged offences.

51 On the other hand, Mdm Husniyati's evidence was ambiguous and shifted under cross-examination. Although Mdm Husniyati had initially reported to Dr Rajesh that the appellant "looked depressed", she subsequently clarified during cross-examination that "there was no outward appearance of any depression whatsoever", and that she had meant that the appellant was "having problems that … can make him to be depressed". Likewise, we agree with the Judge that Mr Peh's evidence was of little value. The interactions between Mr Peh and the appellant, which had allegedly taken place once every three to four months since 2015, were even more infrequent than those between Mr Pang and the appellant. Though Mr Peh testified that the appellant had looked "haggard" and "dull" on one occasion when they met in mid-January 2017, we agree with the Judge that this isolated incident was insufficient to sustain Dr Rajesh's finding that Criterion A1 had been made out.

52 Apart from assessing the factual witnesses' evidence, the Judge was also well-entitled to consider other aspects of the appellant's behaviour. We agree with the Judge that the appellant's decision not to abort Pei Shan's foetus as well as his determination to turn his career around were relevant in so far as they demonstrated that, despite his mounting debts, the appellant remained hopeful that he could overcome his financial troubles and continue providing for his family. To this end, the appellant actively sought out opportunities to improve his finances – he co-broke property deals, arranged to enrol Zi Ning in a more affordable kindergarten, and even made plans to sell his house – all the while maintaining his dedication to his job at CDW, where he worked late (till about 9.00pm or 10.00pm) *almost every night*. We also found it significant that the appellant remained, by all accounts, a loving husband and father who steadfastly carried out his familial duties (such as taking Zi Ning home from school on a daily basis and buying cooked food for Pei Shan) without complaint. The evidence, when considered in totality, painted the picture of a man who was optimistic about turning his hopes into reality, and not one who experienced low mood "*most of the day, almost every day*" [emphasis added].

53 We would add that, in addition to the reasons given by the Judge, the appellant's evidence on his alleged depressed mood was also suspect because it was internally inconsistent. The appellant reported to Dr Rajesh that his depressed mood, feelings of hopelessness, worthlessness and decreased appetite had started "around mid-2016". Separately, the appellant reported to Dr Ong that he had experienced low mood for about a year prior to the alleged offences (*ie*, since the start of 2016) because of his mounting debts. However, during his examination-in-chief, the appellant testified had felt "[w]orthless, useless, guilty" and suffered disturbed sleep since *mid-2014*, and that he had experienced suicidal thoughts throughout *2015*. These inconsistencies lend

credence to the Judge's finding that the appellant's self-reported symptoms were, as a whole, unreliable.

54 For the above reasons, we are of the view that Criterion A1 would not have been made out *even if* the Criterion A2 symptoms had been present. It is therefore unnecessary for us to consider the appellant's submissions on the relationship between the two criteria. Since the DSM-V expressly stipulates that the appellant must fulfil either Criterion A1 or Criterion A2 in order to qualify for a diagnosis of MDD, the appellant's MDD defence necessarily fails. Nevertheless, we proceed to consider the other diagnostic criteria in Criterion A for completeness.

Criterion A3

55 Criterion A3 requires the appellant to have suffered from significant weight loss (when not dieting) or weight gain, or a decrease or increase in appetite nearly every day.

56 The Judge found that Criterion A3 had not been satisfied as the evidence of the appellant's relatives, colleagues and former colleagues did not support the appellant's self-reported account that he had lost 15kg in the months preceding his alleged offences. In fact, Mr Choong's evidence was that the appellant appeared to have *gained* weight during this time (Judgment at [156]). The objective evidence, namely, the appellant's WhatsApp messages to Pei Shan, as well as the appellant's evidence that he had eaten regularly post-offence and before his arrest, also showed that the appellant had not suffered any loss of appetite (at [159]–[160]).

57 The appellant contends that the Judge erred in his assessment of the witnesses' testimony. According to the appellant, it is plausible that Mr Lim and Mr Pang had simply failed to notice any weight loss on the appellant's part. Moreover, Mr Choong's observation that the appellant's shirt could no longer fit him should not be taken as a conclusive indication of weight gain. Finally, the Judge should not have discounted Mdm Husniyati's evidence that the appellant had lost weight merely because she had made an unverified conjecture as to the cause of such weight loss.

58 In our view, the Judge had undertaken a thorough analysis of the evidence before him, and we see no reason to disagree with his assessment. It is especially pertinent that Mr Lim, who worked with the appellant on a daily basis and had meals with the appellant, testified that the appellant would finish his food and that his appetite appeared normal. Although it is true that the appellant owed Mr Lim money and that he had been chasing the appellant for repayment, there is no reason why this fact should undermine his evidence regarding the appellant's appetite. The only witness who noticed weight loss was Mdm Husniyati, who testified that the appellant seemed to have lost "a bit" of weight between December 2016 and January 2017, but suggested that this might be a result of his eating schedule being disrupted by work. Putting aside the reason she had postulated as to why the weight loss could have occurred, Mdm Husniyati's evidence that the appellant had lost "a bit" of weight still did not support the appellant's self-reported account that he had lost a substantial 15kg.

59 The appellant further submits that the Judge should not have disregarded his evidence that he typically only ate one meal a day, *ie*, dinner, when he returned home from work. However, this claim was clearly inconsistent with

Mr Lim's evidence that he and the appellant had meals together at work. Furthermore, the appellant had sent messages to Pei Shan informing her that he was eating with the CDW staff. When this was pointed out to the appellant during cross-examination, the appellant merely asserted that he had only eaten a small share each time.

60 Finally, the appellant argues that the Judge had failed to consider that, even though he had purchased meals for himself after the killings, there was no evidence that he had actually consumed the food. In support of this argument, the appellant points to his statement dated 5 February 2017, in which he reported that he did not eat anything on 26 January 2017, and that even though he bought food the day after, he did not finish the food as he found it unappetising. However, in that same statement, the appellant gave evidence that he had consumed food on various other occasions after the alleged offences:

(a) On 21 January, he bought breakfast as he was "hungry". When he got home, he had breakfast in his study. Later, he again "felt hungry" and bought dinner which he consumed in his study.

(b) On 22 January, he bought breakfast and ate it in his study.

(c) On 24 January, he did not leave the house, but ate biscuits when he was hungry.

(d) On 25 January, he bought dinner and bubble tea, which he consumed in his study.

(e) On 28 January, he ate lunch at Sembawang Park, and bought chicken rice in preparation for dinner as he did not intend to leave the house later. He was arrested that day in the afternoon.

61 In light of the above facts, the Judge's finding that the appellant did not satisfy Criterion A3 was not plainly wrong or against the weight of the evidence.

Criterion A4

62 Criterion A4 requires the appellant to show that he suffered from insomnia or hypersomnia nearly every day.

63 The Judge found that Criterion A4 was not made out because the appellant's self-reported account of his insomnia was internally inconsistent, difficult to reconcile with his strong performance at work, and unsupported by his post-offence conduct (Judgment at [163]–[165]).

64 The appellant contends that, first, the Judge placed excessive weight on the apparent internal inconsistencies in his evidence. According to the appellant, these inconsistencies were explicable on the basis that he had not been in full control of his faculties during his bouts of insomnia. In any event, he had given a "generally consistent" account of the fact that he had only slept a few hours each night.

65 In our judgment, the inconsistencies in the appellant's evidence were not minor. The appellant produced varying accounts of the duration and severity of his insomnia. For instance, the appellant had reported to Dr Rajesh that he had been experiencing symptoms of poor sleep starting from around mid-2016. However, during his examination-in-chief, he claimed that he had started experiencing disturbed sleep from around mid-2014 onwards. Moreover, although the appellant had informed Dr Yeo that he had managed to sleep three to four hours each night, he later testified that he had only slept for one to two hours each night. The Judge was correct to conclude that these inconsistencies

raised serious questions over the veracity of the appellant's self-reported evidence.

66 Secondly, the appellant points out that there was no expert evidence to support the Judge's opinion that someone who suffered from severe insomnia would not have been able to keep up with the appellant's schedule and perform at work like he did. In our view, expert evidence was not required to reach the conclusion which the Judge had. It is undisputed that the appellant's job required him to, *inter alia*, visit different project sites, liaise with contractors, workers and homeowners, and handle administrative paperwork in the office. It is also undisputed that the appellant continued to carry out his familial duties despite his work schedule (see [52] above). The suggestion that the appellant had been able to complete all of his daily tasks without any observable shortcomings despite only sleeping for one to two hours every night for *months* (or even years) is, in our view, *prima facie* incredible. The Judge's decision to question the reliability of the appellant's evidence was well-founded, especially when viewed in light of the numerous inconsistencies described above.

67 Thirdly, the appellant submits that the Judge should not have given any weight to the fact that he had been able to sleep regular hours post-offence. According to the appellant, his ability to do so was explicable on the basis that he had overdosed on Panadol twice after the commission of the offences, which made him feel "very groggy" and "sleepy". However, based on the appellant's own statements, he had slept for significantly more than one to two hours even on the other days when he had not consumed any pills.

68 Given the above, we do not think that the Judge erred in finding that Criterion A4 was not satisfied.

Criterion A7

69 Criterion A7 requires the appellant to have suffered from feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day, which was not merely self-reproach or guilt about being sick.

70 The Judge found that the appellant's self-reporting on this point was questionable, as there was little evidence of the appellant suffering from feelings of worthlessness, or excessive or inappropriate guilt. The appellant had set clear goals for his career, was optimistic about settling his debts, and performed well at work. Whilst the appellant might have experienced "a degree of shame and self-reproach" as a result of his financial situation, a person who suffered from Criterion A7 symptoms nearly every day could not have shown the ambition and drive, or work performance standard shown by the appellant (Judgment at [170]–[173]).

71 As against this, the appellant contends that the Judge mistook his "sheer desperation and fear of financial ruin" for "ambition and drive" at work. According to the appellant, he had put in tremendous effort at work to "overcome his emotional turmoil and poor focus", because it was his last ticket to financial security. The appellant testified that, notwithstanding his work performance, he had felt "[w]orthless, useless, [and] guilty" from mid-2014 onwards because his financial situation had deteriorated significantly, and he could no longer provide for his family as a husband and father. He also stated that he had felt "very bad" and "look[ed] down on [himself]" when Pei Shan scolded him and compared him with her ex-husband.

72 We accept that (as mentioned at [40] above) Criterion A7 symptoms related to the appellant's internal thoughts and feelings, and therefore would not

have been as easily observable by those around him. Although there was a lack of corroborative evidence, in particular, from the appellant's colleagues, this could perhaps be attributed to the fact that the appellant did not appear to have shared his personal troubles with them. In this regard, Mdm Husniyati gave evidence that the appellant was an introvert who only communicated with his colleagues about work and did not speak much about his personal life. Mr Lim also testified that although he worked with the appellant every day, the appellant was a quiet person who rarely talked about his family problems.

73 The appellant similarly does not appear to have shared his personal difficulties with his friends or family. Although Mr Pang had been in touch with the appellant about once a month, Mr Pang described his relationship with the appellant as a "purely professional" one. Mr Choong also testified that his relationship with the appellant was "not that in-depth", and that their interaction consisted only of "casual chats" after their monthly family dinners. Thus, given the appellant's personality and the nature of his interactions with his family, friends and colleagues, it was not surprising that the people around him had not known that he was experiencing Criterion A7 symptoms.

74 Nevertheless, in our view, the Judge did not err in finding that the appellant had not satisfied Criterion A7. The Judge had assessed the appellant's behaviour as a whole and found that such behaviour was inconsistent with someone who was experiencing feelings of worthlessness or excessive or inappropriate guilt nearly every day, as required under Criterion A7. We agree with the Judge's assessment. Even on his own evidence, the appellant was active in trying to reverse his fortunes, to the extent that he was willing to, *inter alia*, take on a new job at CDW and co-broke property deals with others. The appellant also remained hopeful that he would be able to score a good business

deal from his real estate business. In his interview with Dr Yeo, he had told Dr Yeo that he intended to "fight to the end" and would not give up; and that "up to the last day, [he] hope[d] to close some deals, get the commission, [and] return the money" that he owed. The objective facts and the appellant's self-reported account therefore did not reveal any feelings of worthlessness on his part.

Criterion A8

75 Criterion A8 requires the appellant to have suffered from diminished ability to think or concentrate, or indecisiveness, nearly every day, either by subjective account or as observed by others.

76 The Judge observed that Dr Yeo and Dr Rajesh had agreed that, if the appellant's self-reporting was accepted, Criterion A8 symptoms could be said to be present. Nevertheless, the Judge found that Criterion A8 was not made out. If the appellant had difficulty thinking or concentrating, or was indecisive nearly every day, his work performance and attitude would have been impacted, and these would in turn have been easily picked up by his colleagues and superiors. However, the evidence showed that the appellant was doing well at work. Further, the appellant's post-offence conduct showed that he was able to think clearly (Judgment at [175]–[179]).

77 We agree with the Judge that the appellant's self-reported account was inconsistent with his stellar performance at work and his ability to cover up his tracks and lay a false trail following his offences. The appellant attempts to refute these points by contending, first, that he was performing at work because he needed the financial means to support his family. Secondly, he argues that the Judge erred in taking his lies in relation to forming a suicide pact with

Pei Shan as evidence of him acting with thought and planning in the aftermath of the offences. The appellant claims that his lies were not clever or consistent. Following the arrest, he vacillated between telling the police that he was to blame and attempting to put forth his lie about forming a suicide pact. According to the appellant, this vacillation reflected his diminished ability to think, concentrate and be decisive.

78 However, the appellant's first argument misses the point. His *motive* for performing at work was irrelevant; what mattered was that he had been *able* to do so, and had even been praised by his colleagues and superiors for his work ethic and performance. As to the appellant's second argument, it is clear that his position post-arrest was that he had formed a suicide pact with Pei Shan. He did not withdraw from this position until much later. In any event, as the Judge rightly found, the fact that the appellant was able to formulate the plan in relation to the suicide pact, fabricate the suicide notes, as well as point out these notes and lie about the suicide pact to the police clearly showed that after the alleged offences, and following his arrest (Judgment at [177]–[178]), he had thought about and planned his actions. This contradicted the appellant's account that his ability to think and concentrate had been impaired during that period.

79 The appellant further contends that the Judge erred in finding that he demonstrated "shrewd cognitive ability" in covering up his tracks following the offence. He alleges that his actions were merely "feeble and irrational acts" of a person who did not know what to do. He did not attempt to flee the country or dispose of the bodies, and demonstrated no real escape plan. His multiple and ineffectual attempts at suicide further demonstrated his indecisiveness and inability to exhibit directed thought and action.

80 However, as opposed to what the appellant sought to argue, his acts were neither "feeble" nor "irrational". The Judge had relied on the following acts of the appellant to reach his conclusion that the appellant was able to think clearly (see [179] of the Judgment):

(a) He refused to answer the door when Mdm Husniyati and Mr Lim rang the doorbell of the Flat on 23 January 2017. Instead, he lowered the television volume and remained silent in order to remain undetected.

(b) He kept the air-conditioning running between 20 and 28 January 2017 to slow down the decomposition of Pei Shan's and Zi Ning's bodies.

(c) He kept the windows shut and bought air fresheners to mask the smell of burning and decomposition.

(d) Upon returning to the block where the Flat was located on 28 January 2017, he stopped and waited in his car to check for the presence of police and civil defence ("SCDF") officers.

(e) On the same day, in order to explain the family's absence from the Lunar New Year festivities, he called his mother-in-law and mother and lied that he had been chased out of the Flat because of a fight with Pei Shan.

(f) When Mr Choong pried open a window to the Flat on 28 January 2017, the appellant did not give himself up. It was only when the SCDF officers were about to force an entry that the appellant surrendered himself.

81 It is clear that the appellant had the presence of mind to successfully (for a period at least) evade detection from the people looking for him, in particular, by hiding from his family and Pei Shan's family. He also sought to prevent others from discovering the bodies in the house. These acts were conscious, rational and deliberate.

82 As for the appellant's multiple failed attempts at suicide, we do not think that this necessarily demonstrated his indecisiveness or diminished ability to think or concentrate. There were many possible reasons as to why the appellant did not go through with his alleged plan to kill himself, including the possibilities that he was trying to find another way out of the situation, that he was ultimately too afraid to go through with his plan, and even that he did not truly have any intent to kill himself. In this connection, we agree with the Judge's characterisation of the appellant's suicidal attempts as merely "half-hearted" (Judgment at [186]).

83 For the above reasons, we do not think that the Judge erred in finding that Criterion A8 had not been satisfied.

Criterion A9

84 Criterion A9 requires the appellant to have experienced recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

85 The Judge found that Criterion A9 was not made out for the following reasons. First, in relation to the appellant's pre-offence conduct, the Judge accepted Dr Yeo's evidence that the appellant had suicidal thoughts at various points during a period between October 2016 and January 2017. However, there

was insufficient evidence to show that these thoughts were *recurrent*; instead, the appellant had demonstrated "drive" and a "willingness to fight for the future". There was also no cogent evidence to show that the appellant had attempted suicide prior to the commission of the offences. Secondly, in relation to the appellant's post-offence conduct, his attempts to take his life were at best "half-hearted" and were more likely to have been born out of desperation to avoid the "severe consequences" that he knew would follow from killing his wife and daughter (Judgment at [183]–[186]).

86 For the same reasons that we have given in relation to Criterion A7 (see [72]–[74] above), we accept that Criterion A9 symptoms may not be immediately visible to external observers. Consequently, the absence of corroborative evidence from the appellant's friends, colleagues and family may again be explicable on the basis that the appellant did not share his personal troubles with them. With that said, we agree with the Judge that the evidence as a whole supports the Judge's finding that Criterion A9 had not been made out.

87 The appellant challenges the Judge's decision on this point in three respects. He contends, first, that the Judge was wrong to have relied on Dr Yeo's opinion that there was no evidence that he suffered "recurrent thoughts of death every day" up till the point of the offences. This is because Criterion A9 of the DSM-V does not require that the suicidal ideations recur "every day" or "nearly every day". Secondly, the appellant submits that his attempts to resolve his financial difficulties were not inconsistent with his feelings of guilt and desperation; in fact, it was those very difficulties which had caused him to have recurrent suicidal thoughts. Thirdly, the Judge had erred in discounting the appellant's post-offence suicidal attempts as being "half-hearted", even though

they were ineffectual. Criterion A9 did not require an individual to have followed through with his suicide attempts.

88 However, although the Judge did accept Dr Yeo's views, he did not appear to place any weight on the fact that the appellant's suicidal ideations had not recurred "*every day*". The Judge's finding on this issue was simply that the appellant's suicidal ideations were not "recurrent" (see Judgment at [183]). Furthermore, the rest of the evidence does not support Dr Rajesh's finding that the appellant suffered from recurrent suicidal ideations from mid-2016 onwards. First, records of the appellant's Internet searches on his laptop from 17 January 2017 to 28 January 2017 show that the appellant only began researching the means of committing suicide *after* the offences took place on 20 January 2017. Secondly and more importantly, as we have explained above, the appellant's overall conduct during the period from 2016 to 2017 was inconsistent with that of a person with protracted depressed mood, much less one who was suffering from recurrent thoughts of death.

89 The Judge was also entitled to find that there were doubts as to the veracity of the appellant's testimony that he had attempted suicide on one occasion between December 2016 and January 2017. The appellant did not inform Dr Rajesh of such attempt even though Dr Rajesh had interviewed him at least seven times and had specifically probed him for information about his suicide attempts. Although Dr Rajesh suggested that the appellant may have confused suicidal attempts with suicidal ideation, this is unconvincing as the appellant clearly understood the difference between the two when he testified on the stand. In the premises, it was more likely than not that the appellant had either contrived or exaggerated his account of his alleged suicide attempt between December 2016 and January 2017.

90 As to the post-offence suicide attempts, our view (as mentioned at [82] above) is that these were merely "half-hearted". However, even if the appellant had been serious about wishing to end his life on each of these occasions, the appellant's post-offence conduct *as a whole* did not support Dr Rajesh's claim that the appellant had wanted to end his life because he had not known how to cope with his negative emotions. As Dr Yeo pointed out, whether the appellant was depressed while carrying out the acts of suicide had to be looked at on the basis "of the facts of the case as well as what [could be] gather[ed] from his behaviours in between the acts of suicide". In this regard, it was significant that the appellant could carry out ordinary day-to-day activities such as watching TV, buying bubble tea, and leaving the house to buy food in between his alleged suicide attempts. The appellant had also undertaken complex, goal-oriented tasks such as drafting false suicide notes and employing various means to conceal the death of his wife and daughter. These actions, when viewed collectively, were inconsistent with the behaviour of a man who had wanted to take his life out of hopelessness and despondency. It was far more likely that, as the Judge opined, the appellant's suicide attempts were born out of his desperate desire to take his life on his own terms before his acts were discovered by others (Judgment at [186]).

Conclusion on Criterion A

91 For the reasons set out above, we are of the view that the Judge's finding that none of the Criterion A symptoms were made out in the present case cannot be overturned. Even if we take the appellant's case at its very highest, and accept his self-reported evidence in relation to Criterion A7 and A9 on the basis that those symptoms were not readily observable, the remaining disputed criteria still would not be made out.

Criterion B

92 Criterion B requires the appellant to have suffered from symptoms that "cause clinically significant distress or impairment in social, occupational, or other important areas of functioning". We agree with the Judge and Dr Phang that Criterion B logically flows from Criterion A, such that if the appellant did not exhibit the symptoms required to satisfy Criterion A, he could not have satisfied Criterion B either. However, considering the focus that has been given to Criterion B in the Judgment and in the appellant's submissions, we think it apposite to devote some analysis to this criterion.

Interpretation of Criterion B

93 In so far as this criterion is concerned, the dispute between the parties centres on their respective interpretations of the phrase "clinically significant distress *or* impairment in social, occupational or other important areas of functioning" [emphasis added] in Criterion B. The Prosecution is of the view that the requirements of distress and impairment in Criterion B ought to be read conjunctively, while the appellant argues that they should be read disjunctively.

94 The Judge held that Criterion B should be read *disjunctively* (Judgment at [118]). On the Judge's interpretation of Criterion B, the presence of *either* significant distress or impairment could, *in general*, suffice to establish Criterion B. However, the Judge reasoned that in this specific case, the appellant had to exhibit *both* clinically significant distress and impairment. This was because the appellant's case (based on Dr Rajesh's evidence) was that he had been suffering from MDD of moderate and not mild severity, and in such cases, one would expect to see evidence of impairment on the part of the appellant.

95 Dr Yeo was of the view that the requirements of distress and impairment in Criterion B should be "read as a composite whole". Dr Yeo explained that these requirements could not be read disjunctively, as relying on the requirement of distress alone would be "entirely subjective" and "open to interpretation". Any distress as reported by a person "would have to be supported by impairments in the person's functioning", and these two criteria taken together would then satisfy Criterion B. Dr Yeo also testified that the term "or" was not meant to be read strictly, and that this was how he practised as a forensic psychiatrist.

96 In Dr Phang's view, it was "simply untenable to diagnose … a true genuine mental disorder without impairment of functioning". Where a person suffered from clinically significant distress, this distress had to manifest itself in the impairment of the individual's functioning before he could be diagnosed with such a disorder. Dr Phang testified that he would regard Criterion B as requiring distress *and* impairment as opposed to one *or* the other, but that he was not in position to judge why "or" was used in the criterion. He also opined that Criteria A, B and C were meant to be read as a "whole single entity" and not separately or in a piece-meal fashion. Many of the diagnostic criteria set forth in Criterion A (in particular, Criterion A1, A2, A4, A5, A6, A8 and possibly A9) spoke of or pointed to impairment of functioning. Since Criterion B logically flowed from Criterion A, and was in fact a summation of the diagnostic criteria in Criterion A, it was logical that Criterion B would also require impairment in functioning. Dr Phang acknowledged that in milder depressive episodes, it is possible for an individual's functioning to appear normal, if the individual puts in markedly increased effort to overcome the difficulties conferred by the depressive illness. However, in Dr Phang's view, this "markedly increased effort" would "arguably" already constitute a mild

form of impairment that could satisfy Criterion B. Moreover, once the depressive episode became clinically significant, there would be visible impairment of functioning as well.

97 In contrast, Dr Rajesh was of the view that the word "or" showed that *either* suffering from distress *or* exhibiting impairment was sufficient to satisfy Criterion B. According to Dr Rajesh, individuals suffering from a disorder might experience the symptoms of such a disorder and thereby experience distress. However, these symptoms or the experience of distress may not manifest in impairment of their functioning, because "they are still able to push through, try harder and try to go about their daily lives".

98 With respect, we disagree with the Judge that Criterion B should be interpreted disjunctively for the following reasons.

99 First, a conjunctive reading of Criterion B is supported by the text of the DSM-V itself. Notwithstanding the use of the word "or", a holistic reading of the DSM-V would suggest that an individual must exhibit impairment in order to qualify for a diagnosis of MDD. In particular, we agree with Dr Phang that it is significant that many of the symptoms under Criterion A – from which Criterion B logically flows – entail functional impairment. Moreover, it is explicitly stated in DSM-V that "[f]or some individuals with milder episodes, functioning may appear to be normal but requires markedly increased effort". This suggests, in our view, that even individuals with milder episodes are not expected to function normally even if that may *appear* to be the case.

100 Secondly, and in any event, diagnostic criteria are not legal texts and should not be strictly interpreted as such. Instead, the *clinical practice* of

psychiatrists in how they seek to diagnose patients for MDD should be given greater weight in the court's interpretation of the stated diagnostic criteria. This is alluded to in the Cautionary Statement to the Forensic Use of DSM-V, which states that it is "important to note that the definition of mental disorder included in the DSM-V was developed to meet the needs of clinicians, public health professionals, and research investigators rather than all of the technical needs of the courts and legal professionals".

101 We are satisfied, based on the expert evidence before us, that it is accepted clinical practice for psychiatrists to read the requirements of distress and impairment conjunctively. As stated above, Dr Phang and Dr Yeo agreed that generally, a person suffering from MDD who experiences clinically significant distress would also exhibit impairment in functioning, although Dr Phang acknowledged that in milder cases of the disorder, there could be no *noticeable* impairment due to markedly increased efforts put in by the person to overcome the symptoms. Dr Phang further testified that it is "virtually settled psychiatry that inherent in the definition of a mental disorder is not just clinically significant distress … but also impairment in the various domains of life". Dr Rajesh was the only expert who appeared to take the view that it was generally possible for a person with mental disorder to suffer from significant distress but not exhibit impairment and *vice versa*.

102 Finally, the description of "Depressive Episode" in ICD-10, which Dr Phang testified was the equivalent of MDD in the DSM-V, supports the same conclusion. ICD-10 provides the following diagnostic guidelines for a "Depressive Episode":

(a) An individual with a mild depressive episode is usually distressed by the symptoms and has some difficulty in continuing with work and social activities, but will probably not cease to function completely.

(b) An individual with a moderately severe depressive episode will usually have considerable difficulty in continuing with social, work or domestic activities.

(c) During a severe depressive episode, it is very unlikely that the sufferer will be able to continue with social, work, or domestic activities, except to a very limited extent.

103 The ICD-10 also provides that it is expected that a person with a "Depressive Episode" would exhibit functional impairment, although the extent to which there is impairment varies on a scale depending on the severity of one's disorder.

104 The upshot of the above analysis is that a person would have to exhibit clinically significant distress *as well as* impairment in functioning in order to satisfy Criterion B. If there is no corroborative evidence of any impairment in functioning, the person would have to show that that this was because he or she had employed markedly increased efforts to overcome the symptoms of the disorder, such that he or she appeared normal to external observers.

Application of Criterion B

105 Notwithstanding the dispute over the interpretation of Criterion B, the appellant argues that that he did, in any event, exhibit impairment in functioning for the purposes of Criterion B. The appellant contends that first, he had put in

"tremendous efforts" at work, and that this qualified as an impairment for the purposes of Criterion B. However, this argument is clearly without merit as there was no evidence that the appellant's "tremendous efforts" were directed at *overcoming his diagnostic symptoms*.

106 The appellant further submits that there had been a big change in his occupational capacity, as he had regressed from being a successful property agent earning approximately $10,000 to $15,000 a month to an employee at CDW earning approximately $3,000 a month, and that this constituted impairment. However, this argument is likewise unpersuasive because the appellant has not established a link between this change in occupation and his alleged depression.

107 In our judgment, the best argument that can be made in the appellant's favour is that his financial functioning had been impaired, in the sense that he had been incapable of *coping with or managing* his debt due to the onset of depression. However, while there was *some* evidence supporting this point, the evidence as a whole showed that the appellant had taken various concrete steps to address his financial difficulties, even though his efforts ultimately bore little fruit.

(a) First, the appellant worked hard at his job at CDW and sought to make the most out of it. The appellant testified that he would "put his best in front of other people"; and that he would show his colleagues that he was "able to learn fast and to do the project[s] so that they will hand more project[s] over to [him]".

(b) Secondly, even after he joined CDW, the appellant tried to keep up with some property deals on the side. The appellant reported that the

advertisements which he had placed on the PropertyGuru website for this purpose went "offline" between October and December 2016 as he did not have money to renew them, and he was thus unable to obtain any new clients during that period. He was also unable to attend the courses necessary to renew his license as a housing agent. Nevertheless, he continued to try to close some deals by working with his ex-colleagues. Based on Mr Peh's evidence, the appellant co-broke a rental transaction with him in 2016, and they also marketed an apartment for rental together in mid-January 2017.

(c) Thirdly, the appellant had asked Pei Shan to seek part-time employment, as that would allow them to obtain subsidies for Zi Ning's childcare fees. Unfortunately, Pei Shan was not willing to find a job.

(d) Fourthly, following some pressure from Mr Pang to repay his debt, the appellant had given the possibility of selling his flat some serious thought and had even taken concrete steps to turn this possibility into a reality, including listing the Flat for sale and making the relevant calculations for his prospective earnings (even if this appeared to have been done at Mr Pang's behest).

(e) Fifthly, the appellant had considered finding a cheaper childcare centre for Zi Ning in order to reduce expenditure.

(f) Sixthly, the appellant had asked for loans from his present and ex-colleagues and sought to alleviate his financial situation in that manner. He had also made some attempts to repay these loans.

(g) Finally, the appellant appeared to have a long-term plan in respect of his financial situation. Dr Yeo recorded that the appellant

> "maintained a long term goal of renewing his license later when he had sufficient cash-flow and was able to reason that it was [the] most effective way for him to make enough money to pay off his loans from friends".

108 The above evidence therefore showed that the appellant had been taking steps to increase his earnings or to reduce his household expenditure. Whilst the steps that he took were not always successful, equally, there was no clear evidence that the appellant's financial functioning had been impaired in the manner contemplated at [107] above. The appellant therefore did not satisfy Criterion B.

Conclusion on the MDD diagnosis

109 For the above reasons, we agree with the Judge that the appellant did not satisfy either Criterion A or B, and therefore did not qualify for a diagnosis of MDD.

110 We would add that, in reaching this conclusion, we considered that it might seem inexplicable to a general observer that the appellant had decided to kill *Zi Ning* in particular, when the evidence unequivocally showed that he had been a loving father prior to this incident. Nevertheless, this aberrant decision alone could not ground a diagnosis of MDD given that the objective evidence and the appellant's own account evidently did not support such a conclusion.

111 The appellant's appeal against the Judge's holding that he was not suffering from MDD at the material time is therefore rejected.

The appellant's constitutional challenges

112 We now turn to consider the appellant's constitutional challenges.

113 Sections 299 and 300(*a*) of the PC provide as follows:

> **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.
>
> **Murder**
>
> 300. Except in the cases hereinafter excepted culpable homicide is murder —
>
> (a) if the act by which the death is caused is done with the intention of causing death;
>
> …
>
> **When culpable homicide is not murder**
>
> *Exception 1*.—Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.
>
> …
>
> *Exception 2*.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.
>
> …
>
> *Exception 3*.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge

> of his duty as such public servant, and without ill-will towards the person whose death is caused.
>
> …
>
> *Exception 4*.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> …
>
> *Exception 5*.—Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.
>
> …
>
> *Exception 6*.—Culpable homicide is not murder if the offender being a woman voluntarily causes the death of her child being a child under the age of 12 months, and at the time of the offence the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.
>
> …
>
> *Exception 7*.—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.
>
> [emphasis added in bold italics]

114 As noted in *Public Prosecutor v P Mageswaran and another appeal* [2019] 1 SLR 1253 ("*Mageswaran*") at [16], s 299 specifies three types of intention which will make an act of killing, an act of culpable homicide. For present purposes, we are concerned only with the first type of intention, *ie,* where the act by which death is caused is done "with the intention of causing death" ("first limb of s 299").

115 The appellant challenges the constitutionality of ss 299 and 300 of the PC on two grounds:

(a) First, the first limb of s 299 and s 300(*a*) involve identical "ingredients" but attract different sentences. This effectively permits the Public Prosecutor to select the exact sentence of an offender, thereby encroaching on the judiciary's sentencing powers and offending the separation of powers doctrine ("the separation of powers challenge").

(b) Secondly, the two provisions contravene the principle of equality under the law under Art 12(1) of the Constitution as there is no *intelligible differentia* between the elements that are required to satisfy each offence ("the Art 12 challenge").

116 We address each of these issues in turn.

Preliminary issues

Whether the first limb of s 299 of the PC and 300(a) of the PC are identical

117 At the outset, it is observed that both facets of the appellant's constitutional challenge (*ie*, the separation of powers challenge and the Art 12 challenge) proceed from the premise that the first limb of s 299 and s 300(*a*) are, for all intents and purposes, identical. The primary authority which the appellant relies upon in support of this submission is *Mageswaran*, where this Court stated (at [35], citing Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) at para 8.57) that "the ingredients of the crime under the first limb of s 299 are *exactly the same as* the ingredients of the crime under s 300(*a*)".

118 With respect, we disagree with the appellant's submission. Though the *act* and the *intention* which must be established in respect of the first limb of s 299 and s 300(*a*) are indeed identical, liability under s 300(*a*) of the PC is subject to the *additional* qualification that the accused does not satisfy any of the specific exceptions to murder (see the first sentence of s 300: "Except in the cases hereinafter accepted …"). In other words, an accused person who is convicted under s 300 must have been found by the court to *both* (a) satisfy the *act* and *intention* elements under s 299, *and* (b) fail to satisfy any of the exceptions to murder under s 300. This distinction did not have to be considered in *Mageswaran* where the accused faced a charge under s 299 rather than under s 300(*a*).

119 It is noted that, in a situation where the Defence raises one or more exceptions to murder, the Prosecution does not bear the legal burden of establishing that those exceptions have not been made out in order to secure a conviction under s 300(*a*). However, this is immaterial for present purposes. What is key is that the legal requirements for *liability* under s 299 and s 300(*a*) are not, as the appellant posits, identical. This situation is completely consistent with the purpose of s 300 which is to identify the situations in which culpable homicide amounts to murder which is a more serious crime than culpable homicide which does not amount to murder and would fall under s 299.

120 Our analysis above is further buttressed by a 2012 statement by the Minister for Law, Mr K Shanmugam ("Mr Shanmugam"), on the Government's proposed amendments to the application of the mandatory death penalty to homicide offences under the PC. In this statement, Mr Shanmugam remarked that the Government wanted to retain the mandatory death penalty in cases where there was an intention to kill within the meaning of s 300(*a*), as

"[i]ntentional killing within the meaning of s 300(*a*) is one of the *most serious* offences in our books … It is right to punish such offenders with the most severe penalty" [emphasis added]: see *Parliamentary Debates Singapore: Official Report* (9 July 2012) vol 89 at pp 266–267. Subsequently, during the Parliamentary debates which took place during the second reading of the Penal Code (Amendment) Bill 2012, Mr Shanmugam reiterated that cases falling under s 300(*a*) of the PC involved "deliberate, cold-blooded, intentional killing", as opposed to killing which had, for instance, been "done out of provocation, on the spur of the moment": see *Parliamentary Debates Singapore: Official Report* (14 November 2012) vol 89 at p 1271. It is thus evident that Parliament had intended s 300(*a*) to apply only to the most "serious" types of intentional killing. If an exception to murder such as provocation or diminished responsibility was found to be applicable, the accused person ought to be convicted under s 299 instead, in respect of which the mandatory death penalty would not apply.

Presumption of constitutionality

121 The Prosecution pointed out in its submissions below that ss 299 and 300(*a*) attract a presumption of constitutionality. We note, however, that pursuant to *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 ("*Saravanan Chandaram*") at [154], the presumption of constitutionality in the context of the validity of legislation is "no more than a starting point that legislation will not presumptively be treated as suspect or unconstitutional".

The separation of powers challenge

122 We first address the separation of powers challenge. The appellant argues, in essence, that ss 299 and 300(*a*) of the PC effectively allow the Prosecution to select the sentence to be imposed on the offender, and that this entails encroachment into the judiciary's sentencing powers. In this regard, the appellant recognises that prosecutorial discretion permits the Prosecution to make charging decisions "in the public interest according to the gravity of particular offences". However, he submits that ss 299 and 300(*a*) are of "specific peculiarity" by virtue of being identical provisions. This "specific peculiarity", combined with the fact that ss 299 and 300(*a*) attract different sentences, *in effect* enables the Prosecution to select the appellant's sentence. In response, the Prosecution submits that there are many offences which are criminalised by overlapping penal provisions that attract different punishments.

123 In our judgment, the appellant's argument is without merit. As we have explained at [117] to [120] above, ss 299 and 300(*a*) are not identical provisions. Since ss 299 and 300(*a*) are not identical, there is no practical distinction between the Prosecution's discretion when making charging decisions in choosing between ss 299 and 300(*a*) offences, and the Prosecution's discretion in choosing between offences which have different elements and attract different punishments. In this regard, it cannot be disputed that there are many examples of *overlapping* offences where the offences in question contain one or more identical *actions* or intentions, but one of the offences requires an additional fact or element to be proved and therefore carries a more severe punishment. For example, s 323 of the PC criminalises voluntarily causing hurt, whilst s 325 of the PC criminalises voluntarily causing *grievous* hurt. Section 325 carries a higher penalty than s 323. Another example is s 406 of the

PC which criminalises criminal breach of trust, in comparison with s 408 of the PC which criminalises criminal breach of trust *by employees* and carries a higher penalty.

124 The appellant himself appears to acknowledge that such overlapping provisions do not violate the separation of powers doctrine, and in fact even raises ss 323 and 325 of the PC as an example of provisions that do not result in encroachment on judicial power. Whilst a differentiating factor could be that the burden to establish the exceptions under s 300 falls on the accused, this does not change the fact that the Prosecution, in exercising its discretion to charge an offender under s 300(*a*), would have to consider whether the accused comes under any of the stated exceptions in s 300 as a matter of practice and, more generally, whether the circumstances of the offence and the evidence justify a charge under s 300(*a*) rather than under s 299. Given that the appellant's argument hinges on the identical nature of the first limb of s 299 and s 300(*a*), his argument fails *in limine*.

125 Further, ss 299 and 300(*a*) do not violate the separation of powers by infringing judicial power, as these provisions do not allow the Prosecution to choose the *sentence* to be imposed on the offender. It is well-settled that the legislature has the power to prescribe punishment, whilst judicial power lies in exercising such sentencing discretion as conferred by statute to select the appropriate punishment (*Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 ("*Prabagaran*") at [60]). In line with the principle of separation of powers, it is not "within Parliament's remit to transfer from the judiciary to an executive body the discretion to determine the appropriate punishment for a particular offender" (*Prabagaran* at [61], referencing *Hinds v The Queen* [1977] AC 195 ("*Hinds*") at 226–227).

126 In *Prabagaran*, the court considered three classes of cases where legislative provisions conferring powers upon the Executive were found to have violated the separation of powers by infringing on judicial power. We reproduce these three classes of cases set out at [62] of *Prabagaran*:

> (a) Legislation which enables the Executive to select the sentence to be imposed in a particular case after the accused person has been convicted: *eg*, *Deaton v Attorney-General and the Revenue Commissioners* [1963] IR 170, *Hinds* and *Palling v Corfield* (1970) 123 CLR 52.
>
> (b) Legislation which enables the Executive to make administrative decisions which are directly related to the charges brought against a particular accused person at the time of those decisions, and which have an impact on the actual sentence eventually imposed by a court of law: *eg*, *Mohammed Muktar Ali v The Queen* [1992] 2 AC 93 ("*Muktar Ali*").
>
> (c) Legislation which enables the Executive to make administrative decisions which are not directly related to any charges brought against a particular accused person, but which have an impact on the actual sentence eventually imposed by a court of law pursuant to legislative directions that the Executive's administrative decisions are a condition which limited or eliminated the court's sentencing discretion: *eg*, *State of South Australia v Totani* (2010) 242 CLR 1.

127 The appellant seeks to analogise the present case to that of *Muktar Ali* (*ie*, category (b) above), arguing that in both cases, the *substantive effect* of the legislation is that the Prosecution's discretion to choose a charge would infringe

upon the court's sentencing powers. However, *Muktar Ali* does not assist the appellant.

128 In *Muktar Ali*, the legislation gave the Prosecution, when preferring a charge relating to certain drug related defences, a discretion to choose the court in which the offender was to be tried, that is, either before a Supreme Court judge without a jury or in the Intermediate Court or the District Court. The accused would be convicted upon the same charge, *ie*, trafficking in drugs, in either court, but whether he would be subject to the death penalty was dependent on the Prosecution's choice of court. If the Director of Public Prosecutions chose to prosecute the offender before a judge without a jury, the judge would have no discretion as to punishment and would have to impose the death penalty. In the other courts, other types of punishment were available. The effect of that legislation was therefore to allow the *Prosecution*, and not the judiciary, to select the offender's sentence by choosing the adjudicating court. This amounted to a violation of the separation of powers. In contrast, the Prosecution's exercise of discretion in the present case is merely to decide upon the appropriate charge, which is a function well recognised in common law jurisdictions to be within its remit. The court in which the offender is to be prosecuted would be as prescribed by the legislature in relation to the type of charge preferred. If the court finds the offender guilty of the charge and convicts him on it, it would then select the appropriate sentence within the sentencing range prescribed by the legislature. Whether a mandatory sentence is fixed for a particular charge, such as the mandatory death penalty in the case of s 300(*a*) of the PC, is also an outcome of legislative decision. The Prosecution does not choose the sentence to be imposed on the offender. This element of choice of charge only is significant in terms of separation of powers notwithstanding our observation in *Mageswaran* at [37] that "any exercise of prosecutorial discretion

would inevitably have an impact on the outcome and eventual sentence". That statement simply noted the potential practical effects of a charging decision, it did not ascribe any judicial powers to the prosecution.

129 In fact, the Privy Council in *Muktar Ali* itself drew a distinction between the legislation in that case and legislation which simply allows for prosecutorial discretion in making charging decisions. The court stated at 104 as follows:

> The discretion available [in the present case] … is not concerned with whether a person should be charged with one offence rather than with another. It is concerned with the court before which a person is to be tried. In general, there is no objection of a constitutional or other nature to a prosecuting authority having a discretion of that nature. Under most, if not all, systems of criminal procedure the prosecuting authority has a discretion whether to prosecute a wide range of offences either summarily or under solemn procedure, and the choice depends upon the view taken about the seriousness of the case. … As Lord Diplock observed, a discretion in the prosecuting authority to prosecute for a more serious offence rather than for a less serious one is not open to any constitutional objection. If in Mauritius importation of dangerous drugs by one found to be trafficking carried in all cases the mandatory death penalty and importation on its own a lesser penalty, the Director of Public Prosecution's discretion to charge importation either with or without an allegation of trafficking would be entirely valid. The vice of the present case is that the Director's discretion to prosecute importation with an allegation of trafficking either in a court which must impose the death penalty on conviction with the requisite finding or in a court which can only impose a fine and imprisonment enables him in substance to select the penalty to be imposed in a particular case.

130 Nor does a statute providing for a mandatory sentence, such as the mandatory death penalty, infringe upon judicial power. As stated in *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at [45], "[s]ince the power to prescribe punishments for offences is part of the legislative power and not the judicial power, no written law of general application prescribing any

kind of punishment for an offence, whether such punishment be mandatory or discretionary and whether it be fixed or within a prescribed range, can trespass onto the judicial power". The judiciary, as stated above, exercises its sentencing powers in accordance with statutory limits.

131 The facts in *Muktar Ali* are therefore fundamentally different from those in the present case, and the appellant's analogy cannot stand. The Prosecution's decision to charge an offender under s 300(*a*) as opposed to under s 299 would limit the range of punishment provisions available to the court upon conviction of the offender, but it does not follow from this that the Prosecution has encroached on or exercised judicial powers.

132 Thus, ss 299 and 300(*a*) do not in effect allow the Prosecution to determine an offender's sentence. The statutory provisions are accordingly not unconstitutional for breaching the separation of powers doctrine.

The Art 12 challenge

133 The second main plank of the appellant's constitutional challenge is that ss 299 and 300(*a*) of the PC do not satisfy the reasonable classification test endorsed in *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 ("*Lim Meng Suang*"), and are therefore unconstitutional under Art 12(1) of the Constitution.

134 In response, the Prosecution asserts that the reasonable classification test is of no application in the present context because it is not meant to be applied between the classifications prescribed by *separate* legislative provisions. Sections 299 and 300(a) *individually* satisfy the reasonable classification test, and therefore do not violate Art 12(1) of the Constitution. Moreover, even on

the defence's misapplication of the reasonable classification test, the test is satisfied such that there is no breach of Art 12(1).

135 Article 12(1) of the Constitution states:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.

136 The established test for the constitutionality of legislation under Art 12(1) of the Constitution is the "reasonable classification" test: see *Taw Cheng Kong v Public Prosecutor* [1998] 2 SLR(R) 489 at [54] and [58]; *Lim Meng Suang* at [60]. This has been described as a "threshold test", inasmuch as a failure to satisfy it will result in the statute concerned being rendered void without the court even having to directly engage the concept of equality as such: *Lim Meng Suang* at [62] and [102].

137 Under the reasonable classification test, a statute which prescribes a differentiating measure will be consistent with Art 12(1) if *both* of the following requirements are satisfied:

(a) The classification prescribed by the statute is founded on an *intelligible differentia* ("limb (a)"). An "intelligible" differentia is one that is capable of being apprehended by the intellect or understanding, and is not so unreasonable as to be illogical and/or incoherent: *Lim Meng Suang* at [65] and [67].

(b) The differentia bears a *rational relation* to the object sought to be achieved by that statute ("limb (b)"). If there is a "clear disconnect" between the purpose and object of the impugned statute on one hand and

the relevant differentia on the other, this limb will not be satisfied: *Lim Meng Suang* at [68] and [84].

138 More recently, this Court in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") framed the test somewhat differently. It is not ultimately necessary for us to delve into the possible differences because, in broad terms, the question of contravening Art 12 only arises when the court is presented with the situation where persons who are in all material respects situated similarly are nonetheless treated differently. Where this is shown to be so, it becomes necessary to examine the basis upon which they are treated differently and whether that is justified by some objective that inheres in the relevant legislative or executive action. This simply does not arise here. The appellant's argument rests on the false premise that there is no material difference between him and any other person who is charged for having intentionally caused the death of another person; but yet, he has been charged with the offence under s 300(*a*) whereas others may be or are charged with the offence under s 299. This argument rests on the identical false premise that infects his other argument resting on the separation of powers and which we have explained at [117]–[120] and [123]–[124] above. To restate the point very briefly, any prosecution under s 300(*a*) stands on the footing that, aside from the physical acts and mental elements specified in the provision, the accused person will not be able to avail himself of any of the special exceptions to the offence of murder. That is not the case for a person who is charged with the offence under s 299. The potential availability of a special exception is plainly a material factor that differentiates the two classes of persons and there is no basis at all for suggesting that they are materially alike or that there is any basis for raising an objection under Art 12.

139 The appellant's constitutional challenges are thus dismissed in their totality.

Conclusion

140 For the reasons set out above, the appeal is dismissed. The appellant's conviction and sentence are accordingly upheld.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Chao Hick Tin
Senior Judge

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