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

[2023] SGHC 155

Criminal Case No 6 of 2021

Between

Public Prosecutor

And

Muhammad Salihin bin Ismail

GROUNDS OF DECISION

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

TABLE OF CONTENTS

INTRODUCTION **1**

THE CHARGE **2**

BACKGROUND FACTS **2**

THE EVENTS GIVING RISE TO THE MURDER CHARGE 2

THE VICTIM'S DEATH 4

AUTOPSY OF THE VICTIM 5

THE PARTIES' CASES **7**

THE PROSECUTION'S CASE 7

THE DEFENCE'S CASE 7

THE ISSUES **10**

WHETHER THE ACCUSED PUNCHED THE VICTIM'S ABDOMEN **11**

IDENTIFYING THE "BODILY INJURY" FOR THE *VIRSA SINGH* TEST WHERE THERE ARE MULTIPLE CAUSES TO THE FATAL INJURY **15**

THE SUBMISSIONS 15

ANALYSIS 16

The Virsa Singh test does not address the question of causation of death by acts done by the accused *16*

The Virsa Singh test requires identification of the injury actually inflicted by the accused *18*

The specific scenario posed by the Defence cannot be side-stepped by looking to the "substantial cause test" instead of the Virsa Singh test *21*

Conclusion on the problem of a fatal injury arising from multiple causes *23*

WHETHER ALL ELEMENTS OF THE *VIRSA SINGH* TEST HAD BEEN SATISFIED **24**

FIRST AND SECOND ELEMENTS: PRESENCE AND NATURE OF BODILY INJURY 25

The incident involving the Twins bouncing on the Victim's abdomen *28*

The accused's application of CPR on the Victim *29*

The Victim's vomiting *31*

Conclusion on the first and second elements *31*

THIRD ELEMENT: INTENTION TO INFLICT THE BODILY INJURY CAUSED 32

Whether the accused intended to cause the intra-abdominal injuries when he kicked the Victim's abdomen twice during the 3.00pm incident *33*

Conclusion on the third element *36*

FOURTH ELEMENT: WHETHER THE BODILY INJURY WAS SUFFICIENT IN THE ORDINARY COURSE OF NATURE TO CAUSE DEATH 39

VERDICT **42**

SENTENCE **43**

THE PARTIES' SENTENCING SUBMISSIONS 45

MY DECISION 48

CONCLUSION **51**

Public Prosecutor
v
Muhammad Salihin bin Ismail

[2023] SGHC 155

General Division of the High Court — Criminal Case No 6 of 2021
Pang Khang Chau J
2–5, 9–11 February, 15 March, 6–7, 13 April 2021, 1 March, 9 May 2022

25 May 2023

Pang Khang Chau J:

Introduction

1 The accused, Muhammad Salihin bin Ismail, a 29-year-old male Singaporean, was tried before me for the charge of murder of one Nursabrina Augustiani Abdullah ("the Victim") under s 300(*c*) of the Penal Code (Cap 228, 2008 Rev Ed) ("the Penal Code") ("the Murder Charge"). The accused was the Victim's stepfather. I acquitted the accused of the Murder Charge and substituted it with a conviction for voluntarily causing grievous hurt under s 325 of the Penal Code. After hearing the Prosecution's and Defence's sentencing submissions, I sentenced the accused to nine years' imprisonment and 12 strokes of the cane, with two other charges respectively under s 324 of the Penal Code and s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("the CYPA") taken into consideration.

2 The Prosecution has appealed against my decision to acquit the accused as well as my decision on sentence, and the Defence has also appealed against my decision on sentence. These are my grounds of decision.

The charge

3 The accused claimed trial to the Murder Charge, which arose from two incidents on 1 September 2018 during which the accused allegedly punched and kicked the Victim in her abdomen, leading to intra-abdominal bleeding which resulted in the Victim's death on 2 September 2018.

Background facts

4 The following background facts were undisputed. The accused was the Victim's stepfather. The Victim's mother ("M") married the accused in 2016. At that time, the Victim was two years old. The accused and M also had two biological children, namely two twin boys who were born in November 2016 ("the Twins"). At the material time of the offence, the Victim lived in a rental flat ("the Flat") together with the accused, M and the Twins.[1]

The events giving rise to the Murder Charge

5 It was undisputed that, on 1 September 2018, M left the Flat early in the morning for work and the Victim and the Twins were left in the Flat with the accused. M only returned home that evening at about 8.00pm. The Prosecution's case was that the events giving rise to the Murder Charge took place during this period while the Victim and the Twins were left in the care of the accused.

---

[1] Statement of Agreed Facts ("SOAF") at para 6.

6 At about 10.00am that day, the accused noticed a puddle of urine outside the toilet of the Flat. The accused became angry because he thought that the Victim, who had already been toilet-trained, was misbehaving. The accused called the Victim over to the toilet and placed her on the toilet bowl. It was not in dispute that the accused, after having placed the Victim on the toilet bowl, applied some force on the Victim's abdomen with his knuckles. What was in dispute was whether the force applied by the accused on the Victim's abdomen consisted of punches, as alleged by the Prosecution, or mere nudges to stop the Victim from getting off the toilet bowl, as alleged by the Defence. After this incident at 10.00am, the accused exited the toilet and left the Victim there alone.[2] Nothing untoward happened after that incident.

7 Later that same day, at about 3.00pm, the Victim indicated to the accused that she wanted to go to the toilet. The accused asked the Victim to go to the toilet to urinate on her own. The Victim went into the toilet and came out a while later. After the Victim came out of the toilet, the accused went into the toilet and saw that the Victim had again urinated on the floor in front of the toilet bowl. The accused became angry and called the Victim over. He questioned the Victim about the urine on the floor. The accused then pushed the Victim on the left shoulder, causing her to fall sideways on the ground. Then, while the Victim was lying on her side on the ground, the accused kicked the Victim's abdomen twice with his right leg while barefoot. This part of the 3.00pm incident was undisputed as the accused admitted to pushing the Victim and kicking her abdomen twice during that incident.[3]

---

2 Prosecution's Closing Submissions ("PCS") at para 13.

3 Defence's Closing Submissions ("DCS") at para 22.

8 After the kicks, the accused picked the Victim up and placed her on the toilet bowl. Again, it was not in dispute that, after the accused placed the Victim on the toilet bowl, he applied force on the Victim's abdomen with his knuckles a few times. However, just as in the case of the 10.00am incident, there was a dispute as to whether the force applied consisted of punches or nudges.[4]

9 Later that evening at about 8.00pm, M returned home from work. M also bought dinner for the family. The Victim complained of stomach pain after eating a few mouthfuls of rice. Shortly after, the Victim vomited.[5] The accused then applied some ointment on the Victim's abdomen. The accused testified that, as he was applying ointment on the Victim's abdomen, he noticed that the Victim's face twitched when he pressed on her right abdominal area. The accused then pressed lightly on the other parts of the Victim's abdominal area and asked her if it was painful.[6]

The Victim's death

10 The events that occurred thereafter were also largely undisputed.

11 In the night of 1 September 2018 and in the early hours of 2 September 2018, the Victim continued to vomit periodically. On 2 September 2018, at about 8.00am, the accused brought the Victim to the toilet where the Victim tried to vomit into the toilet bowl. The accused noticed that the Victim had difficulty vomiting so he used his index finger to ease her vomit. The Victim then vomited and became unconscious. The accused carried the Victim out of the toilet and informed M that she was no longer breathing and asked M to call

---

4 DCS at para 22.

5 Agreed Bundle ("AB") at p 270, paras 10–11.

6 AB at p 316, para 127.

for an ambulance. M then asked the accused to perform cardiac pulmonary resuscitation ("CPR") on the Victim and he did so for about 15 minutes until the paramedics arrived at about 9.28am.

12 When the paramedics arrived, it was observed that the Victim was no longer breathing and had no pulse. The paramedics also applied a defibrillator on the Victim's body and noticed that her asystole line was flat, meaning that there was no heartbeat. They also observed that the Victim's hands and legs were stiff and that *rigor mortis* had set in.

13 The Victim was subsequently conveyed to the Accident and Emergency Department of Ng Teng Fong General Hospital ("the Hospital") and arrived there at about 9.44am. On examination, she was not breathing and there was no heartbeat. After resuscitation efforts failed, the Victim was pronounced dead on 2 September 2018 at 10.12am.

14 The Hospital reported the death of the Victim to the police, and following initial investigations, the accused was arrested on 3 September 2018 at about 5.00pm.

Autopsy of the Victim

15 On 3 September 2018, the forensic pathologist, Dr Gilbert Lau ("Dr Lau"), performed an autopsy on the Victim's body. On 17 September 2018, Dr Lau issued an autopsy report ("the Autopsy Report").

16 In the Autopsy Report, Dr Lau certified the cause of the death as:[7]

I(a) HAEMOPERITONEUM *due to*

---

7 AB at p 29.

> (b) BLUNT FORCE TRAUMA OF THE ABDOMEN.
>
> [italics in original]

17 In the second paragraph of his conclusions, Dr Lau explained in more detail that:[8]

> Death was due primarily to intra-abdominal haemorrhage, amounting to 300 ml of blood within the peritoneal cavity (haemoperitoneum), largely attributable to traumatic disruption of the greater omentum and severe bruising, with acute transmural haemorrhage and friability, of a proximal segment of the jejunum. …

18 In layman's language, the cause of death was internal bleeding in the abdominal cavity which arose from injuries in the form of severe disruption of the greater omentum and severe bruising of segments of the small intestines.[9] The greater omentum is an apron of fatty tissue well supplied with small blood vessels that drapes over the intestines.[10]

19 Later in the same paragraph (*ie*, the second paragraph of his conclusions), Dr Lau noted that the following other injuries were also present:[11]

> (a) haemorrhage along two proximal segments of the ileum; and
>
> (b) bruising of the mesentery, the retroperitoneum and both iliopsoas muscles.

---

8 AB at p 28.

9 Transcript, 4 Feb 2021 at p 21 lines 15–22.

10 Transcript, 4 Feb 2021 at p 5 lines 1–5.

11 AB at pp 28–29.

20 Dr Lau further concluded that all the foregoing intra-abdominal injuries, taken together, "would be consistent with the infliction of blunt force trauma to the abdomen, such as that caused by a fist blow, or multiple fist blows".[12]

The parties' cases

The Prosecution's case

21 The Prosecution submitted that the requisite elements of a charge under s 300(*c*) of the Penal Code were made out. It argued that the intra-abdominal injuries as found on the Victim were intentionally inflicted by the accused, as was evident from the manner in which he landed fist blows on the Victim's stomach (during both the 10.00am and 3.00pm incidents) and also kicked the Victim's stomach twice (during the 3.00pm incident). It argued that the evidence before the court showed that the intra-abdominal injuries were sufficient in the ordinary course of nature to cause death.

The Defence's case

22 As I have mentioned earlier, the Defence's position was that the contact between the accused's knuckles and the Victim's abdomen during both the 10.00am and 3.00pm incidents were not forceful and had been mere nudges. Thus, the Defence's case was that those actions were not a cause of the intra-abdominal injuries found on the Victim.

23 It was also the Defence's case that there had been other contributory causes to the intra-abdominal injuries that were not attributable to the accused. These included: (a) an incident where the Twins bounced on the Victim's abdomen a few times, which took place at around 7.00pm on 1 September 2018;

---

12 AB at p 29.

(b) the intra-abdominal pressure caused by the Victim's vomiting in the night of 1 September 2018 and in the early hours of 2 September 2018; and (c) the accused's application of CPR erroneously on the Victim's abdomen. The Defence's case was that each of these were sources of blunt force trauma on the Victim's abdomen, and they were contributory causes to the intra-abdominal injuries.

24 The Defence argued that the "bodily injury" identified for the purposes of an offence under s 300(*c*) of the Penal Code and to which the test in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") is to be applied must be the injury that had actually been inflicted by the accused, and not any injury that is found on the victim at the time of his or her death; in other words, the "bodily injury" referred to in the *Virsa Singh* test must be an injury attributable to the actions of the accused. The *Virsa Singh* test sets out the elements that must be proven for an offence under s 300(*c*) of the Penal Code and has been consistently endorsed by the Court of Appeal as part of Singapore law. Thus, the Defence argued, because the Prosecution had not led evidence on the precise extent of contribution by each of these sources of blunt force trauma to the intra-abdominal injuries on the Victim, it was not possible to ascertain *the extent to which* the intra-abdominal injuries were caused by the accused's kicks during the 3.00pm incident. This gave rise to a reasonable doubt that the accused caused the entirety of the intra-abdominal injuries found on the Victim and as described in the Autopsy Report.[13] Consequently, the Defence argued, the Prosecution's case must fail.

25 In the alternative, assuming that the entirety of the intra-abdominal injuries was caused by the accused's kicks, the Defence argued that:

---

13 DCS at paras 7(b)–(d) and 124–148.

(a) First, the accused had not inflicted the kicks with the requisite *mens rea*.[14] The Defence submitted, relying on the decision of the High Court in *Public Prosecutor v AFR* [2011] 3 SLR 653 ("*AFR*"), that an accused person can only be found to have intended a bodily injury on the victim if it is to some extent foreseeable that such an injury would have resulted from his actions. The ease with which this requirement of foreseeability would be satisfied depends on the actions by which the injury was caused. In this case, given that the intra-abdominal injuries were inflicted by two kicks in succession, injuries of a severity like the intra-abdominal injuries would not have been a foreseeable result at all, and so it could not be said that the accused had intended to cause the intra-abdominal injuries found on the Victim.

(b) Second, there was a reasonable doubt as to whether the intra-abdominal injuries were sufficient in the ordinary course of nature to cause death.[15] In this regard, the Defence relied on medical literature that it had adduced as evidence in the course of trial and also evidence of the Prosecution's witnesses which stated that death did not inevitably follow from what it referred to as a "Class II haemorrhage injury", that is, one involving the loss by a person of 15% to 30% of his circulating blood volume. Given that the intra-abdominal injuries caused the Victim to lose 300ml of blood, which was about 30% of her circulating blood volume, this was a Class II haemorrhage injury, from which death did not inevitably result.

---

14 DCS at paras 149–167.

15 DCS at paras 168–185.

The issues

26 From the foregoing outline of the parties' cases, four broad issues arose for determination:

(a) Whether the force applied by the accused during the 10.00am incident and the 3.00pm incident consisted of fist blows or nudges.

(b) In the case of an offence under s 300(*c*) of the Penal Code where there are multiple contributory causes to the injury that resulted in the victim's death, how is the "bodily injury" for the purposes of the *Virsa Singh* test to be identified? Specifically, does it refer to the composite injury found on the victim at the time of his or her death, or must it be the injury that was actually caused by the accused person or which could be attributable to the accused person?

(c) Whether the injuries inflicted by the accused were done with the requisite *mens rea*.

(d) Whether the injuries inflicted by the accused were sufficient in the ordinary course of nature to cause death.

27 I deal first with issue (a), as it concerns the *actus reus*, which is a matter antecedent to the application of the *Virsa Singh* test, and next with issue (b) as it concerns an issue of principle regarding how the *Virsa Singh* test ought to be applied. Issues (c) and (d) relate to the third and fourth elements respectively of the *Virsa Singh* test, and will be considered in the section of these grounds which deal with the application of the respective elements of the *Virsa Singh* test.

Whether the accused punched the Victim's abdomen

28 The accused's testimony in relation to the 10.00am incident was that, after he summoned the Victim to toilet, he carried her to sit on the toilet bowl. When she tried to stand up to get off the toilet bowl, he nudged her abdomen to stop her from doing so. He observed that she "appeared scared" when he nudged her. He interpreted this as her being fearful of falling into the toilet bowl, as her body was small compared to the size of the toilet bowl. He did not observe any expression of pain from her. In relation to the 3.00pm incident, the accused testified that, after he had kicked the Victim twice, he carried her to sit on the toilet bowl. Again, she tried to get up from the toilet bowl, and each time she did so, the accused would nudge her in the abdomen.

29 The accused was asked to demonstrate in court how his hand looked like when he was nudging the Victim. He curled up the first two joints of each of the four fingers while keeping straight the joints which connect the base of the fingers to the rest of the hand (*ie*, the distal interphalangeal joints and the proximal interphalangeal joints were flexed while the metacarpophalangeal joints were extended).[16] This was consistent with the hand gesture which the accused showed the police during investigations, as could be seen from photographs taken on 10 September 2018 during re-enactment.[17] This was different from that of a clenched fist (in which the metacarpophalangeal joint would also be flexed).[18]

30 The Prosecution pointed to the accused's first statement to the police after his arrest, which was taken on 3 September 2018 at 5.32pm, in which he

---

16 Transcript, 6 Apr 2021 at p 20 lines 20–23.

17 Exhibits P95 and P106.

18 Transcript, 6 Apr 2021 at p 20 lines 23–25.

was recorded as saying that he had "punched" the Victim on her stomach, and that some of those punches had been "quite hard" because he was angry.[19] This statement was recorded by Assistant Superintendent Mahathir bin Mohamad ("ASP Mahathir"), who had spoken to the accused in Malay and then recorded the statement in English.[20] The relevant part of the accused's statement reads as follows:

> [In respect of first incident at 10.00am] … I placed her on the toilet bowl and started punching her on her stomach with my knuckle 4 times. The first was a nudge but the rest were quite hard as I was so angry. [The Victim] cried and that was the end of it.
>
> …
>
> [In respect of the second incident at 3.00pm] … I picked her up by her armpit and she was crying but I was so angry. I kept using my knuckle to punch her stomach. I got so angry that I just left [the Victim] in the toilet.

31 The accused's explanation for this statement during examination-in-chief was that he did not say the word "punch" to ASP Mahathir.[21] Instead, as he did not know how to say the word "nudge" in Malay, he merely demonstrated his actions through hand gestures. During cross-examination, the accused agreed that since ASP Mahathir put the word "nudge" down in the statement, it must have come from the accused.[22] However, the accused continued to disagree that he said the word "punch" to ASP Mahathir.[23]

---

19 Accused's 3 Sep 2018 statement at paras 3 and 5 (AB at pp 204–205).

20 Transcript, 13 Apr 2021 at p 31 lines 21–25.

21 Transcript, 6 Apr 2021 at p 15 lines 13–14, p 31 lines 1–4.

22 Transcript, 6 Apr 2021 at p 30 lines 30–32.

23 Transcript, 6 Apr 2021 at p 14 lines 24–27, p 32 lines 14–22.

32 After the accused completed his evidence, ASP Mahathir was recalled to be questioned on this point. ASP Mahathir was first asked what were the Malay words used by the accused which ASP Mahathir translated into English in the statement as "started punching her on her stomach with my knuckles". ASP Mahathir replied that he could not remember exactly. As for the word "nudge", ASP Mahathir testified that, although the accused spoke to him in Malay, he would say some words in English, one of which was the word "nudge".[24] ASP Mahathir also testified that the accused did not demonstrate any hand gesture and that the contents of the 3 September 2018 statement were the accused's own words. Defence counsel also suggested to ASP Mahathir that the accused might have used the wrong word to describe what happened. ASP Mahathir replied that he was unable to provide an answer to the question.[25]

33 After this 3 September 2018 statement, the accused gave a number of further statements to ASP Violet Toh, the first of which was recorded on 6 September 2018. In both the statements recorded on 6 September 2018 and a further statement recorded on 10 September 2018, the accused consistently described himself as having "nudged" the Victim during both incidents to prevent her from getting up from the toilet bowl.[26] In none of these subsequent statements was he recorded to use the word "punch" again.

34 It appears that ASP Mahathir had no substantive involvement in investigation of the Murder Charge after taking the 3 September 2018 statement. (He was involved in taking only one more statement, on 14 September 2018.

---

24 Transcript, 13 Apr 2021 at p 35 lines 13–22.

25 Transcript, 13 Apr 2021 at p 36 lines 29–32.

26 Accused's 6 Sep 2018 statement at paras 4 and 8 (AB at pp 268–269); Accused's 10 Sep 2018 statement at paras 107 and 118 (AB at pp 290–292).

The remaining 12 investigative statements were all taken by ASP Violet Toh.)[27] Given ASP Mahathir's limited involvement in the matter, I was not persuaded that ASP Mahathir's memory of what occurred more than two years ago during the taking of the statement would be completely accurate and without gaps. In any event, even if I were to accept ASP Mahathir's evidence that the accused had indeed used the word "punch" in the 3 September 2018 statement, I did not think this displaces the overall weight of the evidence in favour of the accused's account that he had nudged rather than punched the Victim.

35 In my judgment, the accused would not have punched or "forcefully hit" the Victim's abdomen. I accepted the accused's evidence that he exerted just enough force to prevent the Victim from getting up from the toilet bowl.[28] In this regard, the accused explained that the force he applied was in reaction to the force which Victim exerted when trying to get up from the toilet bowl.[29] Given the size and strength disparity between the accused and the Victim, it would not have taken very significant force for the accused to prevent the Victim from getting off the toilet bowl. Importantly, the Victim, who was small enough to be at risk of falling into the opening of the toilet bowl, was precariously gripping on to the sides of the toilet bowl while she was sitting on it.[30] If significant force had been used by the accused, the Victim would likely have fallen on her back into the toilet bowl. It was not the Prosecution's case that this happened.

---

27 SOAF at para 21.

28 Transcript, 7 Apr 2021 at p 43 lines 1–6, 23–25, 31–32; see also Accused's 10 Sep 2018 statement at para 107 (AB at p 290); Transcript, 7 Apr 2021 at p 42 lines 5–18.

29 Transcript, 6 April 2021 at p 45 lines 7–8, 17–18, p 47 lines 30–32.

30 Transcript, 6 Apr 2021 at p 6 line 12, p 47 line 10.

36 I therefore accepted the accused's evidence that there was no punching involved and he was only using his knuckles as a barrier to prevent the Victim from leaving the toilet seat. Consequently, the only acts of the accused which are relevant for the purposes of the Murder Charge are the two kicks during the 3.00pm incident.

Identifying the "bodily injury" for the *Virsa Singh* test where there are multiple causes to the fatal injury

The submissions

37 The Defence argued that, in a scenario where there are multiple injuries or multiple contributory causes to the injury found on the victim and resulting in his or her death (which I refer to as the "fatal injury"), the court must identify and isolate the injury (or extent of injury) caused by the accused and treat only this injury as the "bodily injury" to which the *Virsa Singh* test is applied.[31] The Defence argued that this necessarily followed because the *actus reus* of a s 300(*c*) offence is that "bodily injury must actually be inflicted by the accused" (see *Public Prosecutor v Toh Sia Guan* [2020] SGHC 92 ("*Toh Sia Guan*") at [48]).[32] It would prejudice an accused person if the entire fatal injury is included as the "bodily injury", even when part of the fatal injury had not been caused by the accused person.[33] This is because the injury which the accused person actually caused might be one that is not sufficient in the ordinary course of nature to cause death, yet the accused could still face liability under s 300(*c*) if the entirety of the fatal injury is taken to be the "bodily injury".[34]

---

31 DCS at paras 4, 128, 131 and 148.

32 DCS at paras 4–7.

33 DCS at para 133.

34 DCS at paras 191–192.

38 The Prosecution disagreed with the Defence's submission and argued that the problem of multiple contributory causes is not one which arises under the *Virsa Singh* test, but is a straightforward one of causation, for which the answer is found in the "substantial cause test" endorsed by the Court of Appeal in *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 442 ("*Shaiful Edham*").

Analysis

39 At the outset, I agree with the Prosecution that issues concerning causation of death do not arise under the *Virsa Singh* test and are not resolved by the application of the *Virsa Singh* test. However, that does not mean that the presence of multiple causes of injury would not also raise a separate set of problems concerning the application of the *Virsa Singh* test. Consequently, I do not agree with the Prosecution that the Defence's submissions contradicted the "substantial cause test" or required the disapplication of the "substantial cause test" in situations where it is relevant. The "substantial cause test" asks whether the chain of causation had been broken. The Defence's submission asks what is the "bodily injury" on which the *Virsa Singh* test is to be applied. For reasons given below, I agree with the Defence that, as a matter of law and principle, in a case where there are multiple contributory causes to the fatal injury, the "bodily injury" identified for the purposes of the *Virsa Singh* test must be that which had been caused by the accused and cannot simply be the composite injury or fatal injury found on a victim.

The Virsa Singh *test does not address the question of causation of death by acts done by the accused*

40 The Prosecution appears concerned that, if the Defence's submission were accepted, a prosecution under s 300(*c*) will only succeed if the injury

inflicted by the accused is the sole cause of death.[35] This concern is unfounded. It conflates the cause of the *bodily injury* to which the *Virsa Singh* test is to be applied with the cause of *death*. A bodily injury forming the subject matter of a s 300(*c*) offence need not be the sole cause of death for it to pass the *Virsa Singh* test. It only needs to be intentionally inflicted by the accused (third element) and sufficient in the ordinary course of nature to cause death (fourth element). Whether the act of the accused (in inflicting the bodily injury) is the cause of death is a matter to be resolved by reference to the usual rules concerning causation in criminal law.

41 The point that causation of death is not a matter dealt with by the *Virsa Singh* test was also noted in *Toh Sia Guan* ([37] above), where the court observed at [48] that neither the *actus reus* requirement nor the causation requirement were mentioned in the *Virsa Singh* test. To understand this observation, it is useful to refer to the structure of the relevant statutory provisions, which I reproduce below (with the words which are not relevant to the present analysis omitted):

> 299. Whoever *causes death by doing an act* … with the intention of causing such bodily injury as is likely to cause death … commits the offence of culpable homicide.
>
> 300. … culpable homicide is murder —
>
> (*a*) if the *act by which death is caused* is done …
>
> …
>
> (*c*) if it *is done with the intention of causing bodily injury* to any person, and the *bodily injury intended to be inflicted* is sufficient in the ordinary course of nature to cause death; …
>
> [emphasis added]

---

35 Prosecution's Reply Submissions ("PRS") at para 34.

42 The structure here is that s 299 of the Penal Code defines culpable homicide (and defines it in terms of "caus[ing] death by doing an act") while s 300 provides that culpable homicide *is* murder "if the act by which death is caused" is done with certain types of intention (or knowledge in the case of limb (*d*) of s 300). In this structure, s 300 is concerned only with the *mens rea* of murder while the *actus reus* of murder is defined in s 299. The *actus reus* of culpable homicide and murder are the same – causing death by doing an act. It is the difference in *mens rea* which turns culpable homicide into murder. In this structure, the causation requirement is also provided in s 299 by the phrase "causes death by doing an act" – *ie,* the death must have been caused by an act done by the accused. Within this structure, the *Virsa Singh* test explains how the words of s 300(*c*) are to be applied. Since s 300 (and in turn, the words of s 300(*c*)) are concerned only with the *mens rea* of murder, the *Virsa Singh* test is a test for determining *mens rea*. In fact, the decision in *Virsa Singh* was entirely about the nature of the intention required by s 300(*c*) of the Penal Code. For these reasons, I agree with the observation in *Toh Sia Guan* that neither the *actus reus* requirement nor the causation requirement were mentioned in the *Virsa Singh* test.

The Virsa Singh *test requires identification of the injury actually inflicted by the accused*

43 I begin this part of my analysis by reciting the elements of the *Virsa Singh* test. As noted by the Court of Appeal in *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*") at [45]:

> … The four elements of a charge under s 300(*c*) of the [Penal Code] are set out in our decision in *Kho Jabing v PP* [2011] 3 SLR 634 ("*Kho Jabing*") at [22], citing *Virsa Singh v State of Punjab* AIR 1958 SC 465 at [12]:
>
> > (a) a bodily injury must be present and objectively proved;

> (b) the nature of the injury must be objectively proved;
>
> (c) it must be established that the bodily injury in question had been intentionally inflicted; and
>
> (d) the bodily injury in question must be sufficient to cause death in the ordinary course of nature.

44 The first element requires ascertaining the presence of a bodily injury. The second element requires ascertainment of the nature of the said bodily injury. The third element asks whether the bodily injury identified pursuant to the first two elements was intentionally inflicted. The fourth element asks whether the bodily injury identified pursuant to the first three elements is sufficient in the ordinary course of nature to cause death.

45 It goes without saying that, when the third element asks whether the "bodily injury in question" is intentionally inflicted, that phrase can only refer to an injury *inflicted by the accused* and not an injury inflicted by someone else (assuming, for simplicity, that cases involving s 34 of the Penal Code are excluded from the scope of the present discussion). It would make no logical sense to ask whether a particular bodily injury was intentionally inflicted *by the accused* if that bodily injury was not inflicted by the accused in the first place. What this means is that, for the *Virsa Singh* test to be properly applied in accordance with how the test was actually formulated in the *Virsa Singh* case, the court would, in a case involving multiple injuries or multiple causes to an injury, need to identify and isolate the injury actually inflicted by the accused.

46 In this regard, the decision of the High Court in *Public Prosecutor v Phuah Siew Yen* (1991) 3 CLAS News 30 ("*Phuah Siew Yen*") is instructive. In that case, the accused person strangled the victim with a sash while sitting on her chest. The strangulation resulted in congestion and petechiae haemorrhage *above* the ligature mark around the victim's neck. The forensic pathologist

certified the cause of death as asphyxia by strangulation, and he was of the view that, from the nature of the injury, force would have been applied at the victim's neck for at least two minutes. Congestion and petechiae haemorrhage were also observed *below* the ligature mark around the victim's neck. The forensic pathologist agreed that this could have been caused by the weight of the accused's body when the accused sat on the victim's chest, and so there was also an element of traumatic asphyxia as a result of the accused's body weight on the victim's chest in addition to the strangulation. Although the forensic pathologist denied that the traumatic asphyxia contributed to the death, he conceded that it could have "augmented the strangulation", meaning that the time taken for death to occur could be lesser than two minutes due to such augmentation. The defence's forensic pathologist, on the other hand, gave the cause of death as "asphyxia by strangulation associated with some degree of traumatic asphyxia". The defence's forensic pathologist also testified that the absence of a ligature mark in an area below the victim's left ear as recorded in the post-mortem report showed that the pressure applied by the accused had not been tight enough to completely stop venous return, to which the prosecution's forensic pathologist disagreed.

47 The court held:

> … The bodily injury that [the accused] intended to inflict was the strangulation at the neck. It is clear that when [the accused] sat on the chest of the deceased, it was not [his] intention to inflict any injury on her by so sitting. *The medical evidence, however, is that the strangulation of the neck was augmented by the pressure on the chest as a result of [the accused] sitting on the chest. It must, therefore, remain in doubt whether the bodily injury [the accused] intended to inflict (i.e. the strangulation at the neck) would in this case be sufficient in the ordinary course of nature to cause death.* We have in mind the evidence of both pathologists on this issue. We also accept the evidence of [the Defence's forensic pathologist] that the absence of any internal injuries in the neck and the absence of the blanche mark below

> the left ear indicates that the pressure applied was not sufficiently severe.
>
> Accordingly, we find that the Prosecution has not established a case under limb (*c*) of Section 300.
>
> [emphasis added]

48 In *Phuah Siew Yen*, the fatal injury was a combination of: (a) asphyxia arising from the manual strangulation; and (b) traumatic asphyxia arising from the accused's body weight exerted on the victim's chest. The court held that the injury which the accused intended to inflict was the manual strangulation of the victim's neck (*ie*, the first of the two causes), implying that this injury to the neck, rather than the totality of the fatal injury found on the victim, was the relevant "bodily injury" referred to in s 300(*c*) of the Penal Code.

The specific scenario posed by the Defence cannot be side-stepped by looking to the "substantial cause test" instead of the Virsa Singh *test*

49 A requirement that the court identifies the injury actually inflicted by the accused poses no difficulties in most cases. For example, in *Phuah Siew Yen* ([46] above), the court had no difficulty isolating the injury caused to the neck from the injury caused to the chest in its analysis, because the two injuries were inflicted on different parts of the deceased's body. However, one could imagine a scenario where, after the accused had inflicted an injury on a part of the deceased's body, further injuries were inflicted on *exactly the same part of the body* by other persons or other causes, such that it was not possible during autopsy to identify and isolate the injury inflicted by the accused from the injuries caused to the same part of the body by other causes. This is the scenario which the Defence posited when making the submission alluded to at [37] above. While I accept that, in such a scenario, there would be practical difficulties with applying the *Virsa Singh* test in accordance with how the test was actually formulated in the *Virsa Singh* case, I do not agree with the

Prosecution that the application of the "substantial cause test" in such a scenario would be free from similar difficulties.

50 This may be illustrated by considering the authorities concerning the "substantial cause test" cited by the Prosecution. In *R v Smith* [1959] 2 QB 35, the deceased received a stab wound in the chest which pierced his lung, and was then given incorrect treatment in the hospital which impeded his chances of recovery. In *Shaiful Edham* ([38] above), after stabbing the deceased in the neck, the accused threw the deceased into a canal thinking that she was already dead. The certified cause of death was "multiple incised wounds on neck and drowning". In *Murugan a/al Arumugam v Public Prosecutor* [2013] 3 MLJ 345, the deceased suffered spinal injury as a result of being violently assaulted by the accused and then died in the hospital after developing septicaemia. The certified cause of death was "spinal injury due to blunt force trauma with septicaemia due to right leg ulcer". In *Public Prosecutor v Chan Lie San* [2017] SGHC 205, the deceased died in the hospital from pneumonia after receiving severe head injuries from the accused. The certified cause of death was "bronchopneumonia following multiple fractures of the skull". In each of these cases, the court had no difficulty applying the "substantial cause test" by asking whether the injury inflicted by the accused remained an operating and substantial cause *because the court had no difficulty identifying the injury actually inflicted by the accused*. Conversely, in the scenario painted by the Defence, where it is not possible to say what injury was actually inflicted by the accused, it is difficult to see how the court could meaningfully embark on an inquiry into whether the injury inflicted by the accused, which remained unidentified and unidentifiable, was an operating and substantial cause of death.

51 The Prosecution also cited *Guay Seng Tiong Nickson v Public Prosecutor* [2016] 3 SLR 1079 ("*Nickson Guay*"), a case concerning causing

death by negligent act, where the deceased was a child who died from head injuries sustained in a traffic accident between the car driven by the accused and the car driven by the deceased's father. The issue in that case was whether the failure of the deceased's parents to properly secure the deceased in an approved child restraint may be considered as a mitigating factor in sentencing. The issue of causation did not arise for decision in that case as the accused did not dispute causation. More importantly, that case involved only one set of injuries – *ie,* the injuries sustained in the traffic accident. It was not a case concerning multiple injuries being caused to the same part of the body at different times. As such, the citation of *Nickson Guay* does not add to the analysis at [49]–[50] above.

Conclusion on the problem of a fatal injury arising from multiple causes

52 In the light of the foregoing, I do not agree with the Prosecution that the Defence's submission should be dismissed simply as an attempt to argue that the bodily injury inflicted by an accused has to be the sole cause of death.[36] Even though the existence of multiple causes to the fatal injury raises issues of causation which, according to the Prosecution, may be resolved by the "substantial cause test", that does not necessarily mean that it would not also raise a separate and independent set of issues concerning the proper application of the *Virsa Singh* test. The two tests govern different matters, even though their application may be affected in a similar way in certain factual scenarios. Consequently, I agree with the Defence's submission that, in a case involving multiple injuries or multiple causes to an injury, the court would need to identify and isolate the injury actually inflicted by the accused in order to properly apply the *Virsa Singh* test.

---

[36] PRS at para 34.

53 Having said that, I decline to express a view on the Defence's further submission that, where the court is not able to identify and isolate the injury inflicted by the accused from injuries arising from other causes, the Prosecution's case must fail.[37] Given the finding of fact I made (at [61] below) that the contributory effect of the three incidents referred to at [23] above would have been negligible, this is not a question which arose for decision in the present case. Perhaps the answer to this submission could lie in evaluating the facts against other limbs of s 300 of the Penal Code instead of s 300(*c*), or perhaps it could lie in revisiting the *Virsa Singh* test as had been suggested in some academic commentary (see *eg*, Jordan Tan Zhengxian, "Murder Misunderstood: Fundamental Errors in Singapore, Malaysia and India's Locus Classicus on Section 300(c) Murder [2012] 1 SJLS 112). In any event, as the issue did not arise for decision in the present case, I decline to say more.

Whether all elements of the *Virsa Singh* test had been satisfied

54 Having dealt with the first two issues, I turn now to apply the *Virsa Singh* test to the facts. As set out at [43] above, to make out a charge under s 300(*c*) of the Penal Code, the Prosecution must prove beyond reasonable doubt the following elements of the *Virsa Singh* test :

(a) a bodily injury must be present and objectively proved;

(b) the nature of the injury must be objectively proved;

(c) it must be established that the bodily injury in question had been intentionally inflicted; and

---

37 DCS at paras 16(e) and 138.

(d) the bodily injury in question must be sufficient to cause death in the ordinary course of nature.

First and second elements: Presence and nature of bodily injury

55 In a typical case, the first element of the *Virsa Singh* test involves merely ascertaining that a bodily injury was caused and present on the victim, and the second element involves an inquiry into the type and extent of the injury. As explained in *Virsa Singh* (at [19]):

> [i]t must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth.

56 However, the application of the first and second element in the present case involves an additional inquiry, arising from the Defence's case that there were other contributory causes of the intra-abdominal injuries found during the autopsy that are not attributable to the accused. Following what I have set out earlier (see [52] above), it is necessary in such a case to inquire whether there were indeed other contributory causes of the intra-abdominal injuries and, if so, identify the "bodily injury" to which the elements of the *Virsa Singh* test is to be applied.

57 It was not in dispute that the mechanism by which the intra-abdominal injuries were caused by blunt force trauma to the Victim's abdomen (see [16] above). The term "blunt force trauma" denoted a category of injuries where pressure is sustained on the same area of the body with force going through that area.[38] According to Dr Michael De Dios ("Dr De Dios"), a doctor at the

[38] Transcript, 4 Feb 2021 at p 33 lines 2–7.

Accident and Emergency Department of the Hospital who testified for the Prosecution, the factors affecting the severity of injury caused by blunt force trauma included the following:[39]

(a) the degree of force that was applied – a greater degree of force would deal more damage than a smaller one;

(b) the surface area of the source of the trauma that is in contact with the body – for the identical amount of force, more damage results if the surface area was smaller than if the surface area was larger;

(c) the angle of impact on the body – the more perpendicular the angle of impact is to the relevant area of the body, the more force would be transmitted and more damage results; where force is applied at an angle, then the surface of the body may deflect the force; and

(d) the speed of the impact – the higher the velocity of the impact, the greater the force would be.

58 Dr Lau, the forensic pathologist, testified on the nature of the intra-abdominal injuries identified and described in the Autopsy Report. His evidence, which also gave a sense of the nature of the blunt force trauma that was likely to have caused those injuries present on the Victim, was as follows:

(a) The greater omentum, an apron of highly vascular fat that covers the intestines, was nearly completely disrupted.[40] The anatomy of the greater omentum is such that it is not held in tension, which means that it is not the type of tissue that will pull apart from a single rupture. Dr

---

39 Transcript, 11 Feb 2021 at p 8 lines 5–32, p 9 lines 1–3.

40 Transcript, 4 Feb 2021 at p 7 lines 3–7; p 11 lines 7–10.

> Lau therefore surmised that very considerable force must have been applied to the Victim's abdomen to have caused such extensive disruption of the greater omentum.[41]
>
> (b) The bruising of the jejunum and ileum was very severe, having gone right through the full thickness of the relevant parts of the small intestine.[42]
>
> (c) There was bruising of the iliopsoas muscles, which were located at the back and the lower part of the abdomen, which was consistent with blunt force trauma having been inflicted in such a manner that was transmitted through the anterior abdominal wall, reaching not only the internal organs but *also* right to the back of the abdominal cavity.[43]

59 Dr Lau's evidence was that, given the severity and extent of the intra-abdominal injuries, the blunt force trauma giving rise to those injuries must have been very forceful and significant. His evidence on this point was not disputed by the Defence. For completeness, I note that the evidence of Dr Cheah Su Mei ("Dr Cheah"), a paediatrician who testified for the Prosecution, was to similar effect:[44]

> … [the] kinds of injuries [as observed on the Victim and listed in the Autopsy Report] are seen in high velocity, high impact trauma. If I may give an example to the Court of the omental bleeding that I have personally treated, it's usually in a … sudden quick and very hard, high impact trauma such as a handlebar injury with a sudden stop and then a sudden blunt force to that abdomen. …

---

41 Transcript, 4 Feb 2021 at p 22 lines 8–16.

42 Transcript, 4 Feb 2021 at p 8 lines 23–32; p 9 lines 1–2.

43 Transcript, 4 Feb 2021 at p 9 lines 15–26.

44 Transcript, 9 Feb 2021 at p 15 lines 16–20.

> [emphasis added]

60 I next turn to consider each of the three other sources of blunt force trauma relied on by the Defence (namely, the bouncing incident involving the Twins, the Victim's vomiting and the accused's application of CPR on the Victim) and whether, in the light of the medical evidence, they were contributory causes of the intra-abdominal injuries.

The incident involving the Twins bouncing on the Victim's abdomen

61 I start first with the incident where the Twins were observed by the accused as bouncing on the Victim's abdomen. The accused described this incident in the following terms during his evidence-in-chief:[45]

> One of the twins spread their legs and sit on … his buttocks was on top of [the Victim's] stomach whilst [he] was moving up and down on [the Victim's] stomach. … [His legs] did not touch the floor.
>
> …
>
> … the other twin was clapping his hands and cheering. At first, [the Victim] was laughing. This happened for a few seconds and suddenly, [the Victim] shouted, "Pain". So I intervened, I carried the twin which was on top of [the Victim] and put him aside. …

62 During cross-examination, the accused further explained that, during each bounce, one of the Twins' buttocks was in contact with the Victim's abdomen (during which his feet were on the floor) while he sat astride the Victim's abdomen,[46] and then he would jump off the ground and his feet would be "dangling" in the air and not in contact with the ground, before he landed back on the Victim's abdomen again.[47] The accused testified that the bouncing

---

45 Transcript, 6 Apr 2021 at p 9 lines 13–21.

46 Transcript, 7 Apr 2021 at p 23 lines 28–31.

47 Transcript, 7 Apr 2021 at p 24 lines 22–32.

incident happened over a "few seconds"[48] and he also agreed that it was a "short span of time" between when he first saw one of the Twins bouncing and when he intervened and stopped the children from playing.[49]

63 Viewing the medical evidence in totality, I did not accept that the bouncing by either of the Twins on the Victim's abdomen in the manner described by the accused would have constituted a significant source of blunt force trauma. As Dr Cheah testified, small children like the Twins who play together generally do not achieve a significant bounce on each other, and any such bouncing is also not considered a high impact or high velocity activity that would cause significant trauma.[50] This is corroborated by the accused's own evidence when he conceded that he regarded the incident as children "just playing with each other and it is not serious".[51] Dr Lau also gave the opinion that any contribution by the Twins' bouncing to Victim's intra-abdominal injuries "would have been very miniscule or even negligible".[52] Consequently, I found that any contributory effect which this incident had to the intra-abdominal injuries would have been negligible.

The accused's application of CPR on the Victim

64 On this point, the Defence's case was that, after the Victim lost consciousness on 2 September 2018, he applied CPR using both his hands on the Victim's abdomen. This was contrary to the correct procedure for performing CPR on a young child like the Victim, which is to use only two

48 Transcript, 6 Apr 2021 at p 9 lines 19–20.

49 Transcript, 7 Apr 2021 at p 27 lines 6–9.

50 Transcript, 9 Feb 2021 at p 7 lines 1–6.

51 Transcript, 7 Apr 2021 at p 32 lines 15–18.

52 Transcript, 13 Apr 2021 at p 11 lines 2–5.

fingers on the chest.[53] The Defence argued that the accused's application of CPR on the Victim's abdomen using both his hands would have constituted a source of blunt force trauma and contributed to the intra-abdominal injuries found on the Victim. However, the accused's testimony in court was that he had performed CPR on the Victim's chest.[54] The contention that the CPR was performed on the Victim's abdomen was therefore not supported by the evidence.

65 The accused, however, did testify that he performed CPR on the Victim using both his hands instead of only two fingers.[55] This would have resulted in much more force being applied on the Victim's chest than was advisable. The issue then was whether this would have constituted a source of blunt force trauma and contributed to the intra-abdominal injuries on the Victim.

66 During cross-examination, Dr De Dios agreed with counsel for the Defence that CPR performed on a child at the correct location of his or her body but using both hands (instead of two fingers) had a chance of compressing the abdomen.[56] Dr Lau also agreed that this could cause internal injuries.[57] However, Dr Lau added that, since the accused would have been performing CPR after the Victim's breathing and circulation had stopped, any resulting injury would have been perimortem or post-mortem, whereas the injuries he observed during the autopsy were antemortem injuries.[58] Dr Lau considered that

---

53 DCS at paras 51–56.

54 Transcript, 6 Apr 2021 at p 12 lines 1–2.

55 Transcript, 6 Apr 2021 at p 12 lines 1–6.]

56 Transcript, 11 Feb 2021 at p 13 lines 27–31, p 14 lines 1–22.

57 Transcript, 4 Feb 2021 at p 34 lines 4–26.

58 Transcript, 4 Feb 2021 at p 56 lines 4–28.

any contribution from the misapplication of CPR would likely have been negligible.[59] Thus, I found that any contributory effect that the accused's application of CPR on the Victim's chest using two hands might have had on the intra-abdominal injuries was also negligible.

The Victim's vomiting

67 It was undisputed that the Victim vomited after having dinner on 1 September 2018 and also vomited on several occasions in the early hours of 2 September 2018. Dr Cheah testified that the Victim's vomiting would have been a source of intra-abdominal pressure, and that it might have aggravated *existing* internal abdominal injuries if any were present.[60] The Defence did not put any questions concerning this issue to Dr Lau. However, given the nature of the experts' answers on the significance of the Twins bouncing on the Victim's abdomen and the alleged misapplication of CPR by the accused, I do not see how any contributory effect by the Victim's vomiting to the intra-abdominal injuries would have been anything but negligible.

68 More importantly, unlike the other two incidents, the Victim's vomiting was a natural symptom and consequence of the injuries inflicted by the accused's kicks, which therefore could not be regarded as independent causes to the Victim's intra-abdominal injuries.

Conclusion on the first and second elements

69 For the reasons above, in my judgment, the other sources of blunt force trauma on the Victim's abdomen as alleged by the Defence had negligible

---

59 Transcript, 4 Feb 2021 at p 60 lines 21–25.

60 Transcript, 9 Feb 2021 at p 13 lines 11–22.

contributory effect to the intra-abdominal injuries and I excluded them as causes of the intra-abdominal injuries. In other words, the entirety of the intra-abdominal injuries as identified and described in the Autopsy Report were attributable to the accused, and that is the "bodily injury" to which the third and fourth elements of the *Virsa Singh* test were to be applied.

Third element: Intention to inflict the bodily injury caused

70 For the third element of the *Virsa Singh* test, what needs to be proved is the subjective intention of the accused to cause the bodily injury that is present on the victim. The third element will not be satisfied if the injury was accidental or unintended, or if the accused had intended some other kind of injury (see *Public Prosecutor v Lim Poh Lye and another* [2005] 4 SLR(R) 582 ("*Lim Poh Lye*") at [22]).

71 The inquiry into the accused's intention proceeds on broad lines. It extends to asking whether there was intention to strike the part of the body where the injury was found, and whether there was intention to strike with sufficient force to cause the kind of injury found to be present (see *Virsa Singh* at [21]). However, it does not extend to asking whether the accused intended an injury of a particular degree of seriousness. Thus, so long as the accused intended the injury which he inflicted on the victim, it is irrelevant whether the accused knew of the seriousness of the injury he inflicted, or if he did not intend the injury to be as serious as it turned out to be (see *Lim Poh Lye* at [23] and [37]).

72 The accused's subjective intention is also to be ascertained or inferred from the objective facts and evidence. Thus, in practice, where it is proved that an injury was inflicted and that the accused inflicted it, the natural inference

would be that the accused intended to inflict the injury, unless the evidence or the circumstances warrant an opposite conclusion (see *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 at [45(e)]).

Whether the accused intended to cause the intra-abdominal injuries when he kicked the Victim's abdomen twice during the 3.00pm incident

73 The accused's evidence was that he had been very angry during the 3.00pm incident on 1 September 2018 as he saw the Victim urinate on the floor again despite his earlier instruction to the Victim during the 10.00am incident to not urinate on the floor.[61] He therefore summoned the Victim and asked her why she urinated on the floor of the Toilet, but the Victim remained silent despite his repeated questioning, which caused him to become even angrier. What subsequently happened was explained by the accused in his statement,[62] which was consistent with his testimony in court :[63]

> Out of my anger, I pushed [the Victim] on to the floor. I pushed her left shoulder with my right hand while we were both standing. … Due to my push, [the Victim] fell on to the ground … I remember her right elbow hit the ground first and she landed on the right side of her body. When [the Victim] fell on to the floor, she tried to get up. However, as her feet was touching the urine, it was too slippery and she could not help herself up from the ground.
>
> When I saw [the Victim] trying to get up from the ground, I kicked her stomach once with my right foot. I was not wearing any footwear at that point of time. I lifted my foot above the ground and a distance away from her … I then kicked her stomach area forcefully twice … The two kicks happened continuously very quickly, without any break in between. …

---

61 Transcript, 6 Apr 2021 at p 50 lines 21–30.

62 Accused's 10 Sep 2018 statement (AB at pp 291–292).

63 Transcript, 6 Apr 2021 at p 8 line 9.

74 The accused testified that he had been very angry with the Victim during the 3.00pm incident and so after pushing the Victim onto the floor, he just kicked whatever was in front of him, which happened to be the Victim's abdomen.[64] I accepted the accused's evidence on this and found that he had inflicted the two kicks in quick succession, spontaneously as he was "carried away" by his anger towards the Victim, meaning that he did not kick the Victim with the intention to strike the part of the Victim's body where the intra-abdominal injuries were later found, and he also did not have the intention to strike with sufficient force to cause the sort of injuries that eventually came to be found on the Victim when he inflicted the kicks. This is so for two reasons.

75 First, the 3.00pm incident had been entirely unpremeditated and it had been triggered by the Victim's act of urinating on the floor which resulted in the accused losing his temper. The accused's first response was to push the Victim, but there was no evidence showing that the accused had done so in order that he could target a specific part of the Victim's body when he later inflicted the kicks. The accused's kicks eventually landed on the Victim's abdomen because that was the part of the Victim's body that happened to be directly in front of the accused's right foot after the Victim fell down. I therefore found that the accused did not have the intention, at the time when he inflicted the kicks, to strike at the Victim's abdomen. Second, the entire sequence of events (starting from when the accused first summoned the Victim to the toilet until the Victim was pushed on the floor and then kicked) happened so quickly that I found that the accused could not have formed the intention there and then to strike at any part of the Victim's body with sufficient force as to cause the intra-abdominal injuries that she came to sustain, especially since the incident was a result of the

64 Transcript, 6 Apr 2021 at p 54 lines 10–13; AB at p 351.

accused's spontaneous response after he got angry with the Victim's act of urinating on the floor and then not giving any answers when questioned by the accused.

76 I also found it significant that, in the evening of 1 September 2018 when the accused applied some ointment on the Victim's stomach after she started vomiting, the accused said he "noticed" the Victim's face twitched when he rubbed her right abdominal area, and he then proceeded to press several other spots on the Victim's right, left and upper abdominal area and asked the Victim if it was painful (see [9] above).[65] That was the second occasion that day after the kicks that the accused applied ointment on the Victim's abdomen (the first occasion was after he bathed the children).[66] The accused testified that, on the first occasion when he applied ointment for the Victim, he had been worried about causing pain in the Victim's abdomen because of his earlier kicks.[67] Presumably, this would have also applied to the second occasion when he applied ointment for the Victim and asked her where in her abdominal area she felt pain.

77 The accused would obviously have remembered after the event that he kicked the Victim in the general area of her abdomen, and indeed he was candid with this fact across all his statements and in his testimony in court. It was therefore unsurprising and logical that the accused knew that the Victim would have felt pain in her abdomen as a result of his kicks. What was significant, however, was that the accused asked the Victim where exactly on her abdomen she felt pain when he applied ointment for her on the second occasion. This

---

65 Accused's 11 Sep 2018 statement (AB at pp 317–318).

66 Transcript, 7 Apr, pp 10–11.

67 Transcript, 7 Apr, p 11 lines 10–15; AB at p 316.

showed that the accused did not know where exactly his kicks had landed, and that both kicks were a spontaneous reaction by the accused to his anger.

Conclusion on the third element

78 Therefore, in my judgment, although both of the accused's kicks on the Victim's abdomen had been intentional (in the sense that they were voluntary), he did not intend to cause the intra-abdominal injuries found on the Victim because those kicks were a spontaneous response as a result of his anger and they were inflicted not with any intention to strike at any part of the Victim's body nor with the intention to strike with sufficient force to cause the intra-abdominal injuries that the Victim came to sustain. I therefore found that the third element of the s 300(*c*) offence had not been proven beyond reasonable doubt by the Prosecution.

79 For completeness, I make two further observations. First, I note that that the accused in his 3 September 2018 statement recorded by ASP Mahathir stated that his kicks had been "targeted" at the Victim's stomach. The relevant part of that statement reads as follows:[68]

> … Out of anger, I pushed [the Victim] and she hit the wall behind her. Using my right leg, I gave her two hard kicks on her stomach. The reason why I targeted her stomach was that she had so much problem peeing or passing motion, I wanted to teach her a lesson. I know what I did was wrong. …

80 In his evidence, the accused denied that he had used the word "targeted" when his statement was recorded by ASP Mahathir but he accepted that he did inform ASP Mahathir that he had kicked the Victim twice to "teach her a

---

68 Accused's 3 Sep 2018 statement at para 5 (AB at p 205).

lesson".[69] The reason for that was that he did not know the Malay word for "target".[70] ASP Mahathir disagreed and maintained that the 3 September 2018 statement recorded the accused's own words to him (which were in a mixture of Malay and English) and that the accused could have used the word "target" in English.[71] ASP Mahathir's testimony on this point was not challenged in cross-examination.

81 In the circumstances, I accepted ASP Mahathir's evidence and found that the accused had said the word "targeted" when giving his statement on 3 September 2018. However, I did not find the accused's use of the word "targeted" in the 3 September 2018 statement significant, as the term never appeared again in any of the subsequent statements given by the accused to ASP Violet Toh (see [33] above). The fact remains that the accused only *happened* to kick the Victim's abdomen because, after the Victim fell onto the ground, her abdomen came to be the part of her body that was closest to the accused's right foot after the fall. In other words, the accused ended up kicking the Victim's abdomen because she fell in the way she did. Those circumstances militate against the accused having deliberately targeted the Victim's abdomen by his kicks. Having observed and considered the demeanour of the accused, I was satisfied that he was a credible witness and I preferred his oral evidence that he had not targeted any part of the Victim's body when he kicked the Victim and only kicked the Victim's abdomen because that was the part of her body closest to his right foot. This was also consistent with the account he gave about the

---

69 Transcript, 6 Apr 2021 at p 15 lines 7–8.

70 Transcript, 6 Apr 2021 at p 15 lines 7–8.

71 Transcript, 13 Apr 2021 at p 38 lines 29–32, p 39 lines 1–6.

kicks in his police statement recorded on 13 September 2018 which was not long after the 3 September 2018 statement was recorded.[72]

82 Second, the Prosecution argued that the fact that the kicks had been inflicted with considerable force by the accused showed that he had inflicted the kicks with the intention to cause the intra-abdominal injuries. I should add that there was no dispute that the accused's kicks had been forceful. The accused himself described those kicks as "hard kicks"[73] and "forceful"[74] in his police statements. During cross-examination, he also agreed that they were "hard kicks".[75] In this regard, the Prosecution submitted that a person should be regarded as intending the ordinary and natural consequences of his act. On its face, this submission accorded with the following principle articulated in *Virsa Singh* at [16]:

> The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Therefore, the inquiry is whether the totality of the circumstances justify an inference that the accused lacked the requisite intention. In my judgment, although the accused had kicked the Victim with considerable force, the evidence showed that he had kicked the Victim spontaneously and without targeting the Victim's abdomen. Also, since the kicks were a spontaneous

---

72 Accused's 13 Sep 2018 statement at para 175–176 (AB at p 351).

73 Accused's 3 Sep 2018 statement at para 5 (AB at p 205).

74 Accused's 10 Sep 2018 statement (AB at pp 291–292).

75 Transcript, 6 Apr 2021 at p 52 lines 31–32, p 53 lines 1–3.

response by the accused as a result of his anger, the fact that considerable force had been used was simply an unfortunate consequence of his anger at that time, rather than a result of him intending to strike the Victim's abdomen with sufficient force to cause the sort of injuries found on the Victim. I therefore found the present case to be one where the totality of the circumstances justified the inference that the accused lacked the requisite intention.

Fourth element: Whether the bodily injury was sufficient in the ordinary course of nature to cause death

83 On the basis of my conclusion on the third element, I acquitted the accused of the Murder Charge. For completeness, however, I set out my views on whether the fourth element of the *Virsa Singh* test had been satisfied in this case.

84 The question of whether the bodily injury is sufficient in the ordinary course of nature to cause death is an objective inquiry into the character of the injury. An injury which is "sufficient in the ordinary course of nature to cause death" is one which carries a high probability of death in the ordinary course of nature (see *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 at [33]). It does not import a requirement that the said injury must inevitably and in all circumstances cause death (see In re *Singaram Padayachi and others* (1944) AIR Mad 223 ("*Singaram*") at 225). Also, the probability of death is to be determined without reference to the availability of timely medical intervention or the possibility that the victim may have survived if medical treatment had been rendered (see *Singaram* at 225).

85 In this case, the intra-abdominal injuries caused death as a result of the internal bleeding within the abdomen (or haemoperitoneum). The amount of blood measured in the Victim's abdomen during the autopsy by Dr Lau was

300ml. Dr Lau testified that, on the basis that there is approximately 80ml of circulating blood for every kilogram of body weight in the human body, the Victim (who weighed 12kg at the time of her death) would have had approximately 960ml or 1 litre of circulating blood volume. The loss of even 10% of one's circulating blood volume is already life-threatening[76] and so the Victim's loss of 300ml of blood, which was about 30% of her circulating blood volume, would have been "more than sufficient" to cause her death.[77] Therefore, according to Dr Lau, the intra-abdominal injuries were sufficient in the ordinary course of nature to cause death.

86 The Defence relied on medical literature which classified haemorrhage injury as coming within four classes based on the patient's percentage of blood loss ("the Classification System"). Represented in a table, the four classes in the Classification System were as follows:[78]

	Class I	**Class II**	**Class III**	**Class IV**
Blood loss / % of circulating blood volume	Up to 15%	15% to 30%	30% to 40%	Above 40%

87 According to the Classification System, the loss of 30% of circulating blood volume is a Class II haemorrhage injury. The Defence relied on the evidence of Dr De Dios and Dr Casey Koh ("Dr Koh") (Dr Koh is an accident and emergency doctor and he had examined the Victim at the Accident and Emergency Department of the Hospital on 2 September 2018) that death did not

---

76 Transcript, 4 Feb 2021 at p 7 lines 17–24.

77 Transcript, 4 Feb 2021 at p 14 lines 20–23.

78 Exhibit D1.

inevitably follow from a Class II haemorrhage injury,[79] and submitted that there was a reasonable doubt as to whether a Class II haemorrhage injury, which the Victim suffered from, carried a high probability of death in the ordinary course of nature.

88 This submission was misguided. First, the medical literature which the Defence relied on was an extract from a textbook on emergency medicine titled *Advanced Trauma Life Support*. It described Class II haemorrhage as "uncomplicated hemorrhage for which crystalloid fluid *resuscitation is required*" [emphasis added]. Both Dr Dios and Dr Loh testified that the Classification System was meant to guide doctors in an emergency setting on allocation of resources. In fact, Dr Dios testified that if a Class II haemorrhage is left untreated, it would turn into a Class III haemorrhage and so forth.[80] Seen in this light, it was clear that, when Dr Koh and Dr Dios said that death does not inevitably follow from Class II haemorrhage, what they meant was that death would not follow if there were timely medical intervention. Since the law requires probability of death to be determined without reference to the availability of timely medical intervention, the Classification System did not assist the Defence at all. I therefore accepted Dr Lau's evidence that the intra-abdominal injuries which the Victim suffered from were sufficient in the ordinary course of nature to cause death[81] and rejected the Defence's submission about the Classification System.

---

79 Transcript, 4 Feb 2021 at p 80 lines 16–18; 11 Feb, p 17 lines 16–18.

80 Transcript, 11 Feb 2021 at p 17 lines 22–25.

81 Transcript, 13 Apr 2021 at p 13 lines 10–11.

Verdict

89 Given my conclusion on the third element, I found that the Prosecution had not proven beyond a reasonable doubt that the accused intentionally inflicted the intra-abdominal injuries on the Victim. I therefore acquitted the accused of the Murder Charge.

90 Section 141 of the CPC permits the court to convict the accused person of a lesser offence that has not been framed and with which he has not been charged, where certain particulars of the principal offence have been proved and these are sufficient to sustain the lesser charge, or if the facts proved reduced the offence charge to a lesser offence (see *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 at [104]).

91 I had to consider whether the facts already proven by the Prosecution disclosed a lesser offence for which the accused could be convicted pursuant to s 141 of the CPC. Given my finding that the accused had kicked the Victim as a spontaneous response to his anger, it was not open to me to convict the accused of culpable homicide not amounting to murder under s 299 of the Penal Code. Obviously, the accused did not inflict the kicks with the intention to cause death. Since the kicks were a spontaneous reaction and the accused did not have the intention to strike with sufficient force to cause injuries of the sort that the Victim sustained, the accused also did not inflict the kicks with the intention to cause such bodily injury as is likely to cause death. For the same reason, the accused could not have, at the time of inflicting those kicks, appreciated the likely result of his actions. He therefore did not know that his kicks were likely to cause death.

92 In the circumstances, I convicted the accused of the offence of voluntarily causing grievous hurt under s 325 of the Penal Code, pursuant to s 141 of the CPC.

Sentence

93 For the purposes of sentencing, the parties consented for two outstanding charges against the accused to be taken into consideration pursuant to s 148 of the CPC.[82] These were:

(a) a charge of voluntarily causing hurt to the Victim by means of a heated substance under s 324 of the Penal Code arising from an incident sometime between July and October 2017 when the accused intentionally scalded the Victim with hot water while bathing her ("the VCH Charge").

(b) a charge of child abuse under s 5(1) of the CYPA arising from an incident sometime between January and April 2018 when the accused ill-treated the Victim by slamming her head against the floor ("the CYPA Charge").

94 As the Court of Appeal explained in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [55], the primary sentencing objective in offences under s 325 of the Penal Code is deterrence, and retribution may also be relevant as a sentencing consideration where heinous violence has been inflicted. The Court of Appeal in *BDB* at [55]–[56] also set out the sentencing approach for s 325 offences, which involves a two-step process. First, the court identifies the indicative starting point for sentencing by reference to the seriousness of the

82 Prosecution's Sentencing Submissions ("PSS") at para 2.

injury caused. In a case where the grievous hurt takes the form of death (as is also the case here), the indicative starting point should be a term of imprisonment of around eight years. Second, after the indicative starting point has been identified, the court then considers the necessary adjustments upwards or downwards based on an assessment of the offender's culpability and the presence of relevant aggravating and/or mitigating factors, a non-exhaustive list of which was identified by the Court of Appeal in *BDB* at [62] and [71] as follows.

> (a) The aggravating factors include: (i) the extent of deliberation or premeditation; (ii) the manner and duration of the attack; (iii) the victim's vulnerability; (iv) the use of any weapon; (v) whether the attack was undertaken by a group; (vi) any relevant antecedents on the offender's part; and (vii) any prior intervention by the authorities.
>
> (b) The mitigating factors include: (i) the offender's mental condition; (ii) the offender's genuine remorse; and (iii) the offender's personal or social problems.

95 In *BDB* at [60], the Court of Appeal held that death is generally the most serious consequence of any offence and may warrant the imposition of the maximum sentence in appropriate cases. The court emphasised that, where death results from the infliction of severe physical violence on a young victim, this would warrant a sentence close to the statutory maximum. However, the court also reiterated at [61] that each case must be assessed based on its own particular factors and the sentencing framework was not meant to be rigidly applied.

96 An offender under s 325 of the Penal Code may also be liable to caning in addition to a sentence of imprisonment. The Court of Appeal in *BDB* held at [76] that, where violence has been inflicted on a victim, retribution is likely to be the principal sentencing consideration that warrants the imposition of caning. The court also held at [76] that, where death is caused, a sentence of 12 or more strokes of the cane may be warranted.

The parties' sentencing submissions

97 Both the Prosecution and the Defence agreed that the applicable sentencing framework in this case was that set out by the Court of Appeal in *BDB*. They were also in agreement that, following *BDB*, the indicative starting sentence in this case (an offence of voluntarily causing grievous hurt resulting in death) was eight years' imprisonment and 12 strokes of the cane.[83] For the purposes of step two of the sentencing framework, parties agreed on the appropriate number of strokes to be imposed but they differed in their positions on the appropriate imprisonment term.

98 The case of *BDB* was one where the offender inflicted severe physical violence on her biological son who was four years old that resulted in his death. The offender was charged with two offences under s 325 of the Penal Code as well as four other charges under the CYPA. In respect of the s 325 charge involving the victim's death, the Court of Appeal held that the appropriate starting point was nine years' imprisonment (see *BDB* at [124]). As the offender was exempted from caning, the court enhanced her sentence by 6 months pursuant to s 325(2) of the CPC in lieu of 14 strokes of the cane that the court would otherwise have imposed (see *BDB* at [128]).

---

83 PSS at para 14; Defence's Sentencing Submissions ("DSS") at paras 4–5.

99 The Prosecution sought a sentence of ten years' imprisonment and 12 strokes of the cane. The Prosecution accepted that the events giving rise to the accused's conviction under s 325 in this case were less aggravated than those in *BDB*, but it submitted that there were two factors warranting a higher imprisonment term in this case. The first factor was the charges taken into consideration ("the TIC Charges") which were similar in nature to the s 325 offence for which the accused was convicted and so the court should accordingly enhance the sentence for the s 325 offence. The Prosecution pointed out that in *BDB*, there were other proceeded charges and so the court had the option of imposing consecutive sentences to ensure that the overall aggregate sentence was commensurate to the offending in that case. Therefore, the nine-year imprisonment term in *BDB* had not been subject to any enhancement on account of similar offences taken into consideration.[84] The second factor was the fact that the accused in this case had delayed seeking medical help for the Victim even after it became clear to him that the Victim was in significant distress after the kicks to her abdomen. The delay had been for more than 12 hours and it demonstrated that the accused blatantly disregarded the Victim's health and welfare. The delay was also aggravating because the reason for the delay was the accused's self-preservation. The Prosecution also highlighted that such delay in seeking medical attention had been a feature of offending in the TIC Charges.[85]

100 The Prosecution also submitted that there were no significant mitigating factors in this case. In particular, the Prosecution argued that there was no evidence of genuine remorse as the accused never accepted responsibility for causing the Victim's death, as was evident from his defence in which he sought

---

84 PSS at paras 26–29; Transcript, 9 May 2022 at pp 5–7.

85 PSS at para 25; Transcript, 9 May 2022 at p 9 lines 25–29.

to avoid responsibility by relying on other events as having caused the intra-abdominal injuries.[86]

101 The Defence submitted that the appropriate sentence was seven years' and six months' imprisonment and 12 strokes of the cane. The Defence argued that the present case was less serious than *BDB* because it involved no sustained period of abuse, the manner in which the Victim was assaulted by the accused was also less egregious than in *BDB.* Further, unlike in *BDB*, this was not a case where the offence occurred in spite of prior intervention of authorities like the Child Protection Services.[87] The Defence also argued that the accused was genuinely remorseful for his actions and that he had cooperated fully with the authorities in the investigation process, as was evident from the confessions made in his police statements.[88]

102 The Defence also made the following submissions in response to the two factors which the Prosecution relied on in arguing that this case nevertheless warranted a higher imprisonment than that in *BDB*. First, the Defence argued that the sentence of nine years' imprisonment in *BDB* had, in fact, been subject to some enhancement, as the Court of Appeal had taken into account the other proceeded charges in that case, as well as the past instances of violence inflicted by the offender on the victim that were not the subject of any of the proceeded charges or charges taken into consideration, in arriving at the overall criminality of the offender for the purposes of the subject offence.[89] Second, the Defence argued that there was insufficient evidence in this case showing that the accused

---

86 PSS at para 30.

87 DSS at paras 17–30.

88 DSS at paras 45–49.

89 Transcript, 9 May 2022 at pp 13–14.

had intentionally delayed seeking medical attention for the Victim's injuries for self-preservation.[90]

My decision

103 In this case, since death was caused to the Victim, the appropriate starting point was an imprisonment term of eight years and 12 strokes of the cane.

104 In my view, the following aggravating factors, taken from the list identified by the Court of Appeal in *BDB* (see [86] above), were relevant in this case: (a) the manner of the attack; (b) the victim's vulnerability; and (c) any relevant antecedents.

105 As for the first factor, the focus is on the viciousness of the offender's actions and his culpability, and the inquiry is one into whether there was cruelty in the manner of the attack and whether the victim's agony had been exacerbated by the manner in which injuries were inflicted, which is to be inferred from the circumstances of the attack, like the frequency and recurrence of the attacks, and the length of time over which the attacks are carried out (see *BDB* at [64]). In terms of this factor, the accused's actions in this case (which were two kicks in quick succession to the Victim's abdomen) were not as severe and brutal as those of the offender in *BDB* (which involved the offender pushing the victim causing him to fall and hit his head on the ground, and then later choking the victim on his neck on two occasions, the second of which left the victim weak and unresponsive). The Prosecution and the Defence were in agreement on this.

---

90 Transcript, 9 May 2022 at p 12 lines 19–32.

106 As for the second factor, this will often be engaged in the case of young victims, and it will be given additional weight where the victim's vulnerability is also rooted in the relationship of trust and dependence that exists between the victim and the offender (see *BDB* at [65]). I agreed with the Prosecution that this factor was engaged in this case, and further that there had been an abuse of trust and authority by the accused given the relationship of trust and dependence between himself and the Victim. This is because the accused was one of the primary caregivers responsible for the Victim's care and welfare and the Victim also regarded the accused as his father. I noted, however, that this factor was also engaged on the facts of *BDB* in similar terms (see *BDB* at [124]).

107 As for the third factor, I agreed with the Prosecution that the TIC Charges should be given due weight in determining the accused's overall criminality and in arriving at the appropriate sentence. I agreed with the Prosecution that in so far as this factor was concerned, this case could be distinguished from *BDB* as the Court of Appeal in that case had the option of consecutive sentencing because the offender was convicted of four distinct charges.

108 I should also add that I agreed with the Defence's submission that this case was also distinguishable from *BDB* because there was no evidence of prior intervention by child protection authorities. As the Court of Appeal explained in *BDB* at [70], this is an aggravating factor rooted in the enhanced need for specific deterrence when an offender *continues* to abuse a young victim despite prior intervention by the authorities.

109 I come to the Prosecution's submission that a further aggravating factor in this case was that there had been delay on the accused's part in seeking medical attention for the Victim. I rejected this submission for two reasons.

First, as a general principle, delay on the part of an accused person in helping the victim of an offence of violence seek medical attention should not be a relevant aggravating factor. The aggravating factors considered at stage two of the sentencing framework in *BDB* are meant to adjust for the offender's culpability (see *BDB* at [62]). Thus, in order for a factor to constitute an aggravating factor in this context, it must relate to the manner in which the offence had been committed (see *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [35]). The accused's act of delaying medical attention relates to what occurred *after* the commission of the offence, and not the manner in which the offence had been committed. Furthermore, to the extent that a delay in seeking medical attention contributed to the victim's demise or the more severe injury that he or she eventually suffered from, this already constituted a consequence of the offence, which would have been factored in identifying the indicative starting sentence under the first step of the sentencing framework in *BDB* (see *BDB* at [56]).

110 Second, even if this were an aggravating factor, I was of the view that it was not engaged on the facts of this case. I agreed with the Defence that there was insufficient evidence to support the finding that there had been deliberate delay on the part of the accused in seeking medical attention for the Victim. This was because there were no visible external injuries as a result of the kicks and the Victim's abdominal discomfort and subsequent vomiting may not have sufficiently alerted the accused to the possibility that the Victim had, in fact, sustained severe injuries. I also noted that the accused had, in fact, been concerned whether the Victim was suffering from pain or discomfort as a result of his kicks, as he had pressed on various parts of the Victim's abdomen in the evening of 1 September 2018 when applying ointment on her, asking her where she felt pain (see [68] above). This demonstrated concern on the part of the

accused. I found it likely that, had the Victim told the accused that she was in great pain or discomfort (which unfortunately she was unable to), the accused would have sought medical attention earlier.

111 Finally, I agreed with the Defence's submission that the accused had demonstrated genuine remorse and this was a mitigating factor operating in his favour. The accused had come clean in his police statements, which were taken shortly after the incident on 1 September 2018, that he had kicked the Victim's abdomen forcefully. I noted that the Court of Appeal in *BDB* stated at [74] that an offender's cooperation with the investigating authorities should not be regarded as a strong mitigating factor if there is overwhelming evidence against him. However, this case was qualitatively different as I was satisfied from the accused's police statements and his court testimony as a whole that he had accepted responsibility for his actions and the accused's admissions and cooperation with the authorities was demonstrative of genuine remorse.

112 As for the punishment of caning, the parties agreed that 12 strokes of the cane was appropriate. I saw no reason to disagree.

113 Taking all the relevant factors into account, I was of the view that the appropriate sentence in this case was nine years' imprisonment and 12 strokes of the cane.

Conclusion

114 For the above reasons, I acquitted the accused of the Murder Charge and substituted it with a conviction under s 325 of the Penal Code for voluntarily causing grievous hurt to the Victim. The appropriate sentence for the s 325 offence, with the VCH Charge and the CYPA Charge taken into consideration,

was nine years' imprisonment and 12 strokes of the cane. The accused's sentence was also backdated to 3 September 2018, the date of his arrest.

Pang Khang Chau
Judge of the High Court

Senthilkumaran Sabapathy and Lim Yu Hui (Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam and Suang Wijaya (Eugene Thuraisingam LLP) for the accused.