IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 44

Criminal Appeal No 10 of 2023

Between

Zin Mar Nwe

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 60 of 2021

Between

Public Prosecutor

… *Prosecution*

And

Zin Mar Nwe

… *Accused Person*

GROUNDS OF DECISION

[Criminal Law — Defences — Diminished responsibility]

[Criminal Law — Defences — Grave and sudden provocation]
[Criminal Law — Offences — Culpable homicide not amounting to murder]
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[Criminal Procedure and Sentencing — Sentencing — Appeals]

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v
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Court of Appeal — Criminal Appeal No 10 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and See Kee Oon JAD
14 May, 26 August 2025

18 September 2025

See Kee Oon JAD (delivering the grounds of decision of the court):

1 The appellant, Ms Zin Mar Nwe (the "Appellant"), was a foreign domestic worker who stood trial on a charge of having murdered her employer's mother-in-law. At her trial before a judge of the General Division of the High Court (the "Judge"), she relied solely on the defence of diminished responsibility under Exception 7 to s 300 ("Exception 7") of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). The Judge rejected her defence and convicted her on the murder charge. As there was reason to believe that the Appellant was only 17 years of age at the time of the offence, she was sentenced to life imprisonment instead of death.

2 The Appellant appealed against her conviction and sentence. Whilst maintaining that the Judge should have accepted her defence of diminished responsibility, the Appellant also sought to rely for the first time on the

alternative partial defence of grave and sudden provocation under Exception 1 to s 300 of the Penal Code ("Exception 1").

3 At the close of the hearing before us on 14 May 2025, we allowed the appeal against conviction on grounds that sufficient evidence had been led at trial to avail the Appellant of the partial defence of grave and sudden provocation. A further hearing was then convened on 26 August 2025, where we convicted the Appellant on an amended charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code and sentenced her to a reduced imprisonment term of 17 years in place of life imprisonment. These are the full reasons for our decision.

Background facts

4 The background facts were largely undisputed. The Appellant is a Burmese national who arrived in Singapore on 5 January 2018 seeking employment as a foreign domestic worker. In doing so, the Appellant had falsely declared her age as 23. Bone-age tests performed on the Appellant would later reveal that she was closer to 17 years of age as at the date of the offence (*ie*, 25 June 2018).

5 From 10 May 2018, the Appellant was employed in the household of one "Mr S". The other members of the household were Mr S' wife ("Mrs S") and their two daughters ("D1" and "D2"). Mr S was the Appellant's third employer in about four months after her arrival in Singapore.

6 The deceased, Mdm M (the "Deceased"), was Mr S' mother-in-law. She arrived in Singapore from India on 26 May 2018 for a month-long stay at Mr S' residence (the "Unit").

7 On 25 June 2018, Mr S, Mrs S and their children had left the Unit by 11.27am. The Appellant remained at home with the Deceased.

8 Sometime between 11.27am and 12.17pm, the Appellant brought a knife from the kitchen to the living room, where the Deceased lay on a sofa watching television. The Appellant then stabbed the Deceased multiple times until the latter stopped moving. The Appellant thereafter proceeded to one of the Unit's bedrooms, where she broke into a locked cupboard to retrieve various personal effects and some money which belonged to her. She washed the knife which she had used to stab the Deceased and left it in the kitchen, where it was later retrieved by the police.

9 At around 12.17pm, the Appellant left the Unit after having changed her clothes and gathered some of her personal belongings. She first proceeded to her employment agency, where she requested for her passport. She left the agency, however, as soon as she heard that the agency's staff were about to call her employers. The Appellant then went to various locations across Singapore before returning to the agency at around 5.30pm, where she was arrested shortly thereafter at around 5.55pm.

10 An autopsy was performed on the Deceased the same day by Clinical Professor Gilbert Lau ("Prof Lau") of the Health Sciences Authority. The cause of the Deceased's death was certified by Prof Lau as "multiple stab wounds". In particular, Prof Lau opined that, of the 26 stab wounds observed on the Deceased's body, three of them would have sufficed in the ordinary course of nature to cause death.

11 The Appellant was eventually charged with murder under s 300(*c*) read with s 302(2) of the Penal Code for having inflicted multiple stab wounds on

the Deceased with a knife, with the intention of causing those injuries, which injuries were sufficient in the ordinary course of nature to cause death.

12 The ingredients of the murder charge were not disputed by the Appellant in the proceedings below. She only sought to rely on the partial defence of diminished responsibility under Exception 7.

The evidence

13 The material evidence adduced at trial included: (a) the Appellant's ten statements to the police; and (b) psychiatric reports tendered by the Appellant's and Prosecution's experts.

The Appellant's police statements

14 The Appellant denied having killed the Deceased in her first two statements to the police of 25 and 26 June 2018. Her initial account was that the culprits were "two men with dark complexion" who had entered the Unit and attacked the Deceased whilst the Appellant was disposing of rubbish at the common rubbish chute outside.

15 The Appellant only admitted to having stabbed the Deceased for the first time in her third statement of 29 June 2018. The crux of the Appellant's account to the police was that the Deceased had physically and verbally abused her, both on the morning of the incident as well as prior to that. Crucially, the Deceased had threatened the Appellant in the moments before the fatal attack by uttering: "Tomorrow. You. Go. Agent." The Appellant understood this to mean that she would be sent back to her employment agency and consequently repatriated to Myanmar in debt to her agents, given that Mr S was already her third employer

in about four months. According to the Appellant, the Deceased's threat made her "very angry" and was the trigger for the stabbing.

The Appellant's medical evidence

16 As alluded to at [12] above, the only defence advanced by the Appellant at trial was that of diminished responsibility under Exception 7. In support of this defence, the Appellant called on the expert medical evidence of Dr Tommy Tan Kay Seng ("Dr Tan"). Dr Tan was a Consultant Psychiatrist at the Novena Psychiatry Clinic, Novena Medical Center.

17 In his report dated 12 September 2020 ("Dr Tan's Report"), Dr Tan opined that the Appellant had suffered from "mixed anxiety and depressive reaction" or "adjustment disorder with mixed anxiety and depressed mood" at the time of the offence. Dr Tan later confirmed at trial that both labels were intended to refer to the same condition. We refer to this generally as the "AD Diagnosis".

18 Dr Tan also considered the Appellant to have been in a "dissociative state" at the time of the stabbing. This hypothesis was central to Dr Tan's entire assessment because it supplied the basis for his conclusion that the Appellant had been both unaware and incapable of controlling her actions at the time she stabbed the Deceased. This conclusion was, in turn, the foundation for the Appellant's defence of diminished responsibility. We reproduce the material portions of Dr Tan's Report below:

> Psychiatric diagnosis
>
> 79. **[The Appellant] had mixed anxiety and depressive reaction (F43.22, International Classification of Diseases Revision 10) or adjustment disorder with mixed anxiety and depressed mood (309.28,**

> **Diagnostic and Statistical Manual 5th edition) at the time of the alleged offence.**
>
> …
>
> Mental state at the time of the alleged offence
>
> …
>
> 88. [The Appellant] described that she was not able to remember exactly what happened after [the Deceased] said that she was sending her back to the agency the next day. She remembered she was "blank" in her mind. She did not realised [*sic*] that she had stabbed [the Deceased]. She had only realised what she had done after she had stabbed [the Deceased].
>
> 89. In my opinion, [the Appellant] qualifies for the defence of diminished responsibility for the offence of murder.
>
> 90. She had an abnormality of mind that was induced by her mental disorder, as to substantially impair her mental responsibility for her acts.
>
> 91. [The Appellant] was depressed in mood and anxious daily. She told herself that she had to endure the hardship as [the Deceased] would go back to her own home eventually. She was very anxious whenever she was with [the Deceased].
>
> 92. [The Appellant] was constantly fearful of being sent back to the agency as she would be returned to Myanmar. She was also in a state of very high anxiety just before the alleged offence, i.e. she was feeling very tense and fearful, due to mishaps which had just happened before the alleged accident. As she was already in a heightened state of anxiety and fear, she would be highly vulnerable to reacting in a dramatic behaviour [*sic*] or with outbursts of violence when she was suddenly told she would be sent back to the agency.
>
> 93. **She was in a dissociative state at the time of the alleged offence. Her mind was not conscious of what she was doing. She was not able to control her acts when she was stabbing [the Deceased]. She was unable to remember she had stabbed [the Deceased]. She only knew that she had stabbed [the Deceased] after it had happened.**

[emphasis in underline in the original; emphasis added in bold]

The Prosecution's medical evidence

19 The Prosecution relied on the expert evidence of Dr Alias Lijo ("Dr Lijo"), a Consultant Psychiatrist at the Institute of Mental Health. Two psychiatric reports were prepared by Dr Lijo, one dated 30 July 2018 ("Dr Lijo's First Report") and the other dated 16 March 2021 ("Dr Lijo's Second Report").

20 At the time Dr Lijo's First Report was prepared, the Appellant had denied any involvement in the Deceased's death and her account of events then was noted in the report (see [14] above). Dr Lijo also noted in his interviews with the Appellant that:

> 15 … She was calm and co-operative. Her speech was relevant and coherent. Her mood was normal and she had a reactive affect. She did not have any perceptual abnormalities, delusions, obsessions or compulsions. Her thought process was normal. She denied any suicidal or homicidal ideations. She was oriented to time, place and person.

21 Dr Lijo concluded his first report by stating that the Appellant was not suffering from any mental illness or intellectual disability, and that she had not been of unsound mind at the time of the alleged offence.

22 Dr Lijo's Second Report was prepared in response to Dr Tan's Report. The salient points may be summarised as follows:

(a) Dr Lijo reiterated his view that the Appellant suffered from no mental illness.

(b) He also disagreed with the AD Diagnosis, principally on grounds that it was "solely based on the information given by the [Appellant]". Dr Lijo also noted that "apart from the mood and anxiety symptoms, there should be impairment in social, occupational or other important

areas of functioning" before the AD Diagnosis could be made. In this regard, the information given by the Appellant, Mr S, and the Appellant's agent was not indicative of any such impairment.

(c) Dr Lijo also disagreed with Dr Tan's opinion that the Appellant had been in a dissociative state at the time of the stabbing, again because that conclusion had been reached solely on the basis of self-reported information (in particular, the Appellant's account of not remembering having stabbed the Deceased).

(d) Dr Lijo took the view that the Appellant did not qualify for the defence of diminished responsibility because she had no mental illness that impaired her mental responsibility for her acts at the time of the offence.

The decision below

23 The Appellant's defence was rejected by the Judge for reasons set out in *Public Prosecutor v Zin Mar Nwe* [2023] SGHC 146 (the "Judgment"). In overview:

(a) The Judge was not persuaded that the Appellant had suffered from an abnormality of mind at the time of the offence. He rejected Dr Tan's opinion of the Appellant having been in a dissociative state then. To the contrary, the evidence indicated that the Appellant had been conscious of her actions at the time she stabbed the Deceased (Judgment at [65]–[66]).

(b) The Judge further rejected Dr Tan's AD Diagnosis and preferred Dr Lijo's opinion that the Appellant suffered from no mental illness at the time of the stabbing (at [68]–[69]).

(c) The Judge thus concluded that the Appellant's mental responsibility for causing the Deceased's death had not been substantially impaired (at [72]).

24 On that footing, the Judge was satisfied that the charge of murder had been proved beyond reasonable doubt and that no defence had been made out by the Appellant (Judgment at [82]). The Appellant was accordingly convicted on the charge of murder and sentenced to life imprisonment, as the Judge was bound to do, given that there was reason to believe the Appellant was below 18 years of age at the time of the offence (see [4] above).

25 We note that the Judge was prepared to accept that the Deceased had abused the Appellant both physically and verbally and had threatened to send her back to her agent. The Judge was also persuaded that, but for the threat, the Appellant would not have stabbed the Deceased (Judgment at [62] and [63]). For reasons that we shall elaborate on, these findings were material to our decision to allow the Appellant's appeal.

The appeal against conviction

26 Before us, the appeal against conviction was advanced on two grounds, namely that the Judge had erred in:

(a) rejecting the partial defence of diminished responsibility under Exception 7; and

(b) failing to consider the partial defence of grave and sudden provocation under Exception 1 which, although not raised by the Appellant in her defence at trial, was nevertheless reasonably available on the evidence.

27 Having considered the parties' submissions and the evidence led below, we rejected the first but accepted the second ground of appeal.

Exception 7: Diminished Responsibility

The requirements

28 Exception 7 as it was in force at the time of the offence provides:

> *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.

29 The burden was on the Appellant to bring herself within the exception. It was thus incumbent on her to establish on a balance of probabilities that, at the time of the offence:

(a) she had been suffering from an abnormality of mind ("Requirement 1");

(b) such abnormality of mind ("Requirement 2"):

(i) arose from a condition of arrested or retarded development;

(ii) arose from any inherent causes; or

(iii) was induced by disease or injury; and

(c) the abnormality of mind substantially impaired her mental responsibility for her acts and omissions in causing the Deceased's death ("Requirement 3").

30 These were the three *distinct* and *cumulative* requirements that the Appellant had to establish, and each of them represented questions of fact that were ultimately for the trial judge's decision: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") at [79] and [80]–[82]; *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [21]. The ordinary thresholds for appellate intervention therefore applied in respect of these factual issues (*Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [74]):

> An appellate court will be slow to criticise without good reason a trial court's findings on expert evidence … However, if the appellate court entertains doubts as to whether the evidence has been satisfactorily sifted or assessed by the trial court it may embark on its own critical evaluation of the evidence focussing on obvious errors of fact and/or deficiencies in the reasoning process.

Requirement 1: Abnormality of mind

31 On Requirement 1, the Judge was not persuaded that the Appellant had suffered from an abnormality of mind at the time of the stabbing. In particular, the Judge rejected Dr Tan's opinion that the Appellant was in a dissociative state at the material time (Judgment at [65]–[67]).

32 In reaching this conclusion, the Judge had regard to the following aspects of the evidence:

(a) In her statements to the police, the Appellant acknowledged that the stabbing was a reaction borne out of anger. She was also able to describe the material events in some detail. On the whole, the contents of her statements indicated that she had been aware of what she was doing at the time of the offence (Judgment at [65]).

(b) The Appellant's behaviour in the aftermath of the stabbing was also inconsistent with the suggestion that she had been in a dissociative state (Judgment at [67]).

33 On appeal, the Appellant submitted that the Judge "did not appear to have fully considered … what the specific *Byrne* particulars/manifestations (if any) of the abnormality of mind were" at the time of the stabbing. This was a reference to the three "manifestations" of an "abnormality of mind" as defined in *R v Byrne* [1960] 2 QB 396 ("*Byrne*"), which remains good law in Singapore. That definition was helpfully explained in *Iskandar* (at [81]–[82]):

> 81 In respect of the first limb, what amounts to an "abnormality of mind" was defined by Lord Parker CJ, delivering the judgment of the court in the seminal English Court of Criminal Appeal decision of *R v Byrne* [1960] 2 QB 396 ("*Byrne*") (at 403):
>
> > *'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment.* The expression 'mental responsibility for his acts' points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts. [emphasis added]
>
> 82 The above definition in *Byrne* has been adopted by this court (see *Ong Pang Siew* at [61] and, more recently, *Wang Zhijian* at [64]). As was clarified in the Privy Council decision (on appeal from the Supreme Court of the Bahama Islands) of *Elvan Rose v The Queen* [1961] AC 496 ("*Rose v R*"), the defence is not limited to conditions on the "borderline of insanity" (affirmed in *Ong Pang Siew* at [62]). **Thus, the court when examining whether there was an "abnormality of mind" must determine whether the evidence exists of the three possible manifestations contained in the *Byrne* definition (see above at [81]), *viz*, an abnormally reduced mental**

> **capacity to (a) understand events; (b) judge the rightness or wrongness of one's actions; or (c) exercise self-control** … While the evidence of clinical experts will be relevant, this question is ultimately one of fact to be decided by the trial judge (see *Ong Pang Siew* at [59]).
>
> [emphasis in italics in the original; emphasis added in bold]

34 The Appellant's submission was that the Judge had erred inasmuch as a proper assessment of the evidence would show that she "had suffered from an abnormality of mind in the form of an abnormally reduced mental capacity to exercise her self-control at the time of the stabbing".

35 We were not persuaded by this submission. We earlier observed (at [18] above) that in his report, Dr Tan had opined that:

> [The Appellant] was in a dissociative state at the time of the alleged offence. Her mind was not conscious of what she was doing. She was not able to control her acts when she was stabbing [the Deceased]. She was unable to remember she had stabbed [the Deceased]. She only knew that she had stabbed [the Deceased] after it had happened.

Clearly, Dr Tan's initial theory was that the Appellant's dissociative state had resulted in her abnormally reduced mental capacity to understand events and exercise self-control. That corresponded with manifestations (a) and (c) of an "abnormality of mind" on the *Byrne* definition, as explained in *Iskandar* (see [33] above). We also noted that, apart from the Appellant's alleged dissociation, Dr Tan offered no alternative explanation for his conclusion that she had been both unaware and incapable of controlling her actions at the material time.

36 Over the course of the trial, however, Dr Tan all but abandoned his initial view of the Appellant having been unaware of her actions:

> A: She was already so tensed, so---so anxious and---and then she would just have a knife pointed at---scissors or

> knife pointed at her neck. I mean, she was really in a very highly strung state of mind then already. And when it happened, she has no control of what she was doing.
>
> Q: She had no control over what she was doing.
>
> A: Yes.
>
> Q: She was unable to control her actions.
>
> A: Yes, *she knows what she's doing but she's unable to control her actions.*
>
> [emphasis added]

It therefore emerged from Dr Tan's cross-examination that the mental abnormality identified in his written report had morphed from one qualifying under manifestations (a) and (c) to one that only qualified under manifestation (c). This change in position was expressly noted at [80] of the Judgment.

37 On his view of the evidence, the Judge concluded that the Appellant was aware of her actions at the material time, in which case there could have been no mental abnormality qualifying under manifestation (a) of the *Byrne* definition (Judgment at [79]). The Judge thus rejected Dr Tan's suggestion that the Appellant could have been both conscious of her actions *and* incapable of controlling them, for there would then have been no dissociation between her thoughts and her actions (Judgment at [80]). In other words, the position eventually taken by Dr Tan was inconsistent with his underlying assessment of the Appellant having been in a dissociative state at the time of the offence.

38 For the purposes of this appeal, the essential question was whether the Judge had obviously erred in finding that Requirement 1 was not satisfied because the available evidence was overwhelmingly probative of the Appellant having been in a dissociative state with a reduced capacity for self-control at the time of the offence. For the reasons set out below, we did not think that the Judge had so erred.

39 First, Dr Tan explained (and Dr Lijo agreed) that "dissociation" or "dissociative state" refers to a disconnect between a person's mind and his actions. This was similar to the definition set out in an article by the American Psychiatric Association on dissociative disorders (Exhibit D6 – "*What Are Dissociative Disorders?*") adduced by the Appellant at trial:

> *Dissociation is a disconnection between a person's thoughts, memories, feelings, actions or sense of who he or she is. This is a normal process that everyone has experienced.* Examples of mild, common dissociation include daydreaming, highway hypnosis or "getting lost" in a book or movie, *all of which involve "losing touch" with awareness of one's immediate surroundings.*
>
> [emphasis added]

It was reasonably clear on these definitions that dissociation impinges on one's cognition of things, events or actions; as Dr Tan put it in his cross-examination, it refers to a situation where "the mind doesn't know what the hand is doing".

40 This was significant because the Judge found that the Appellant *was* aware of her actions at the material time. The Appellant did not dispute this on appeal. Indeed, it was not open to her to do so given that the point had been conceded by Dr Tan under cross-examination (see [36] above). In other words, this was a case where the mind in fact knew what the hand was doing. Quite apart from whether the Appellant was able to control her actions, the fact that she was aware of them at the time of the offence was irreconcilable with Dr Tan's claim that she had been in a dissociative state then. That much was self-evident given his own explanation that a "dissociative state" refers to a disconnect between a person's mind and his actions.

41 This inconsistency gravely undercut the Appellant's argument on appeal. We earlier observed that the only abnormality of mind posited by the Appellant's case at trial was her alleged dissociation at the time of the offence,

and Dr Tan's assessment of the Appellant having been in a dissociative state was the sole basis for his expert opinion that she had suffered from an abnormality of mind (at [18] above). That opinion was no longer sustainable once Dr Tan conceded that the Appellant knew what she was doing at the material time, and the Judge made no error in rejecting it for that reason (Judgment at [80]).

42 Second, Dr Tan's Report was based solely on information provided to him by the Appellant and her sister. Dr Tan candidly admitted that he took at face value what the Appellant had said at their interviews:

> Q: … banking on her account for the purposes of your report would mean that you trusted her to be a reliable narrator of what had happened in relation to the time of the offence and just before the time of the offence, correct? In other words, you had to take what her---what she said to be true to come up with a diagnosis.
>
> A: Yes.
>
> …
>
> Q: When you interviewed her, how did you know she was telling you the truth?
>
> A: *I take it at---I take it at face value. Everything I take at face value. What she tells me is correct.*
>
> [emphasis added]

43 This further undermined the reliability of Dr Tan's opinion that the Appellant had been in a dissociative state at the time of the offence. Dr Tan himself accepted that it would have been preferable to rely on more contemporaneous statements made by the Appellant:

(a) On cross-examination, Dr Tan advanced for the first time the theory that the Appellant may have subconsciously altered her memories, so that her account to him that she could hardly remember

anything about the incident, though inaccurate, was not a conscious lie. In doing so, however, Dr Tan took the point that he would have "personally put more reliance on what she told [the Investigating Officer]."

(b) Dr Tan later unequivocally agreed to the suggestion that what the Appellant had told the Investigating Officer would have been more relevant to her mental state at the time of the offence (as opposed to what she had told Dr Tan herself at their interviews).

44 We reiterate at this juncture that although the evidence of clinical experts will be relevant in determining whether there was an "abnormality of mind" satisfying Requirement 1, that question is "ultimately one of *fact* to be decided by the trial judge" [emphasis in original]: *Iskandar* at [82], referring to *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [59]. In the present case, the Appellant had staked her defence on Dr Tan's opinion that she was in a dissociative state at the time of the stabbing. The point was made in her written closing submissions below dated 30 January 2023:

> 11 Exception 7(b), Section 300 of the [Penal Code] provides that culpable homicide is **not murder if at the time of the acts or omissions causing the death concerned, the offender was suffering from such abnormality of mind** (whether arising from a condition of arrested or retarded development or any inherent causes or induced by disease or injury as **substantially impaired the offender's power to control his acts or omissions in causing the death or being a party to causing the death. In this regard, the Defence relies on the conclusion by Dr. Tan that the Accused was in a dissociated state at the time of committing the offence**.
> …
>
> [emphasis in original]

45 Dr Tan's expert evidence was however of no assistance in showing that the Appellant had suffered from any dissociation amounting to an abnormality

of mind. That followed inexorably from his concession that the Appellant knew what she was doing, as well as his reliance on the Appellant's uncorroborated say-so.

46 For these reasons, we were satisfied that the Judge made no error in finding that Requirement 1 was not satisfied. In answer to the question as framed at [38] above, the evidence was not so probative of the Appellant having been in a dissociative state that appellate intervention was warranted.

47 As we shall explain in due course, for the purposes of evaluating the Appellant's alternative defence under Exception 1, we accepted that there was sufficient evidence of the Appellant having been deprived of self-control in consequence of the Deceased's provocation. However, it bears reiterating that while a loss of self-control is a recognised *manifestation* of an abnormality of mind under the *Byrne* definition, it is not *in and of itself* an abnormality of mind. This is an important distinction which we will revisit further (at [88] below) in addressing the Appellant's alternative defence.

Requirement 2: Aetiology of the abnormality

48 Having upheld the Judge's finding in respect of Requirement 1, it was not strictly necessary to examine whether Requirement 2 was satisfied. Nevertheless, we shall explain why we agreed with the Judge that Requirement 2 was also not satisfied.

49 Under Requirement 2, the abnormality of mind must have arisen from: (a) a condition of arrested or retarded development of mind; (b) any inherent causes; or (c) disease or injury. In this case, the AD Diagnosis was advanced by Dr Tan as the aetiology of the Appellant's putative abnormality of mind (*ie*, her dissociation at the time of the stabbing).

50 The first difficulty with this assessment was that there was nothing in Dr Tan's Report or his oral testimony that explained the connection between the AD Diagnosis and the Appellant's alleged dissociation at the time of the stabbing. Proof of that connection was of vital importance because Exception 7 expressly contemplates an abnormality of mind *arising from* a qualifying psychiatric condition. In fact, Dr Tan conceded under cross-examination that the Appellant's dissociation was *irrelevant* to the AD Diagnosis:

> A: … I said she was in a dissociative state.
>
> Q: And your basis for saying that is not as a cli---it's not as a diagnostic tool but just clinically describing what she has.
>
> A: Yes, correct.
>
> …
>
> Q: It is not relevant to diagnosis of adjustment disorder, correct?
>
> A: … I did not say that she have a diag---a dissociative disorder. I never said that. I'm just merely describing her state of mind then, which was the state of dissociation.
>
> Q: *This is not relevant to the diagnosis of adjustment disorder, correct?*
>
> A: *No, it's not.*
>
> Q: It is not relevant to whether she suffers from diminished responsibility, yes?
>
> A: It is---yes, it does because it---it was---it came up as a---it was a result of a abnormal---sorry. Her adjustment disorder that when she was---that as it---as it was provoked by the statement made by the---by the deceased that she---she became violent. And during that period of time, she was in a state of dissociation. I'm trying to explain the link between the---her adjustment disorder and her state of mind at the time of offence. *It's---of course, it's not a part. It's not a part of adjustment disorder per se.* I agree. But I'm trying to explain how it led on to a dissociative state.

[emphasis added]

51 By his last response in the foregoing extract, Dr Tan attempted to explain the connection between the AD Diagnosis and the Appellant's dissociation. We did not find that explanation helpful. In fairness to Dr Tan, he later explained in his re-examination that the Appellant had dissociated and lost control *because* she was "so highly tensed and stressed", presumably as a manifestation of her putative adjustment disorder. However, this was merely a restatement rather than an explanation of the causal connection.

52 Dr Lijo, on the other hand, was clear in his evidence that "dissociative states [were] not part of adjustment disorders" and that the diagnostic manuals drew no connection between the two:

> Q: Could you tell us what to---to the best you understand, what dissociative state is Dr Tan referring to and how is this relevant to a diagnosis of adjustment disorder?
>
> A: Okay, so dissociative states are not part of adjustment disorders, you know. I don't think it's mentioned anywhere in our DSM or ICD that a patient gets dissociate because they have adjustment disorder. So I'm not sure why Dr Tan had said that she was in a dissociative state. I'm not sure because it's not explained here why---
>
> Q: Yes.
>
> A: ---what kind of dissociation because of different kinds.

53 In our judgment, even if one were to assume that the Appellant: (a) was in a dissociative state when she stabbed the Deceased; and (b) had suffered from the psychiatric condition identified by Dr Tan at the time of the offence, there was still scarcely any evidence of a causal connection between the two phenomena. This alone was fatal to the defence of diminished responsibility.

54 Second, and in any event, the Judge rejected the AD Diagnosis made by Dr Tan and instead preferred Dr Lijo's evidence that the Appellant suffered

from no mental illness at the time of the stabbing. In doing so, the Judge accepted that the Appellant's reported symptoms of sadness and stress were normal and expected reactions to her circumstances: Judgment at [68]. Crucially, the Judge was not persuaded that the Appellant suffered from: (a) marked distress out of proportion to the severity or intensity of the stressor (*ie*, the Deceased); or (b) significant impairment in social, occupational, or other important areas of function, these being the relevant diagnostic criteria under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (the "DSM-5"): Judgment at [69]–[71].

55 The diagnostic criteria for adjustment disorders prescribed by the DSM-5 are reproduced below:

> Diagnostic Criteria
>
> A. The development of emotional or behavioural symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s).
>
> B. These symptoms or behaviours are clinically significant, as evidenced by one or both of the following:
>
> 1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
>
> 2. Significant impairment in social, occupational, or other important areas of functioning.
>
> C. The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a preexisting mental disorder.
>
> D. The symptoms do not represent normal bereavement.
>
> E. Once the stressor or its consequences have terminated, the symptoms do not persist for more than an additional 6 months.

56 Before us, the Appellant's primary contention was that the Judge had rejected the AD Diagnosis against the weight of the evidence. Emphasis was placed on the Judge's acceptance that the stabbing had been the culmination of the Appellant's abuse at the hands of the Deceased, with the latter's threat of sending the Appellant back to her agent having been the straw that broke the camel's back (Judgment at [62]–[64]).

57 We did not agree with this submission. First, Dr Tan's Report was prepared on the basis of information supplied to him by the Appellant and her sister some two years after the material events. There was no corroboration of the details which formed the foundation for Dr Tan's diagnosis. While Dr Tan explained at trial that there will inevitably be diagnoses that have to be made using uncorroborated information, the lack of contemporaneity and corroboration in the present case made the AD Diagnosis less reliable.

58 This gap in Dr Tan's Report was all the more striking in circumstances where there was no objective evidence of the prior abuse allegedly suffered by the Appellant. As the Prosecution noted in its written submissions:

(a) Medical examinations performed on the Appellant revealed no indications of physical abuse, nor were the results consistent with particulars of the abuse given by the Appellant.

(b) The Appellant maintained a diary and a cookbook in which she recorded (among other things) her feelings of loneliness and vulnerability in a foreign land. There were, however, no accounts or indications of abuse.

(c) No one from Mr S' family could attest to the Deceased ever having physically abused the Appellant, nor were any complaints ever made to them in that regard.

59 In sum, the Appellant's evidence that the stabbing occurred against a backdrop of sustained or prolonged abuse was purely anecdotal and uncorroborated. Pertinently, it was on the strength of that anecdotal evidence that Dr Tan satisfied himself of the relevant diagnostic criteria.

60 Before us, the Prosecution sought to challenge the correctness of the Judge's finding that the Appellant had been abused for "a period" of time before the stabbing (Judgment at [62]). We shall consider this more fully below in addressing the Appellant's alternative defence of grave and sudden provocation.

Requirement 3: Substantial impairment of mental responsibility

61 In respect of Requirement 3, the Judge concluded that the Appellant's mental responsibility for causing the Deceased's death had not been substantially impaired (Judgment at [72]). In view of our decision to uphold the Judge's findings on Requirements 1 and 2, this third requirement was no longer in issue. We therefore say no more in respect of it.

Exception 1: Grave and Sudden Provocation

62 We move on to consider the partial defence of grave and sudden provocation. This defence was never pursued in the proceedings below. Instead, it surfaced for the first time in the Appellant's Supplementary Petition of Appeal.

63 Be that as it may, the parties agreed and we accepted that the Appellant could not be precluded from raising this defence on appeal by the mere fact of her failure to do so at trial. In *Mohd Suief bin Ismail v Public Prosecutor* [2016] 2 SLR 893 ("*Mohd Suief*") (at [25]–[26]), the Court of Appeal reiterated the principles laid down by the Privy Council in *Mohamed Kunjo v Public Prosecutor* [1977–1978] SLR(R) 211 and observed that, particularly in capital cases, the courts will afford "maximum flexibility" to accused persons in establishing their defences.

64 This is not licence for accused persons to "reserve" arguments that they can then resort to on appeal. To the contrary, it is incumbent on *all parties* to proffer all the arguments they may wish to rely on at the trial itself. As a matter of fairness to accused persons, however, they should be permitted to raise alternative defences on appeal *provided* those defences were "reasonably available on the evidence before the court at the trial itself" (*Mohd Suief* at [26]).

65 In the premises, it was necessary for us to consider if the defence of grave and sudden provocation was reasonably available to the Appellant having regard to the evidence led at the trial below. For the reasons set out below, we answered this question in the affirmative and allowed the appeal on that basis.

The requirements

66 Exception 1 as it was in force at the time of the offence reads:

> *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.
>
> The above exception is subject to the following provisos:

> (*a*) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;
>
> (b) that the offender did not know and had no reason to believe that the provocation was given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;
>
> (c) that the provocation is not given by anything done in the lawful exercise of the right of private defence.
>
> *Explanation.*— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.
>
> …

67 The leading authority on the meaning of Exception 1 is *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR 453 ("*Pathip Selvan*"), which both the Appellant and the Prosecution referred to. In that case, the Court of Appeal interpreted the text of Exception 1 and distilled two tests that an accused person must satisfy in order to rely on it:

> (a) The subjective test: First, the accused must show that he had been deprived of self-control by the provocation. Deprivation of self-control in this context means a "sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind" (*Pathip Selvan* at [35]). We pause here to observe that deprivation of self-control in this sense may well also indicate a state of mind "so different from that of ordinary human beings that the reasonable man would term it abnormal" (per Lord Parker CJ in *Byrne* at 403). To that extent, there may in some instances be an overlap between Requirement 1 under Exception 7 and the subjective test under Exception 1. These defences remain conceptually separate, of course, and any evidence as to an accused's

capacity for self-control must be assessed in the light of the specific defence raised for the court's consideration.

(b) The objective test: Second, the accused must show on a balance of probabilities that an ordinary person of the same sex and age as the accused, sharing his characteristics as could reasonably affect the gravity of the provocation, would have been so provoked as to suddenly lose his self-control (*Pathip Selvan* at [43]). "Suddenness" in this context means that the provocation had to be both unexpected and sufficiently close in time to the act causing death (*Pathip Selvan* at [45]–[46]).

68 In the context of this appeal, the alleged provocation was the Deceased having said to the Appellant, "*Tomorrow. You. Go. Agent.*" The Judge was satisfied that the Deceased had made this utterance, which the Appellant perceived as a threat (see [15] above). This finding was not seriously disputed by the Prosecution. There also appeared to be no dispute that the provocation was "sudden" and proximate in time to the Appellant's fatal attack. Instead, the primary points of contention were:

(a) whether the Appellant had been deprived of self-control by the provocation; and

(b) whether the provocation was grave enough that it could reasonably lead an ordinary person of the same sex and age as the Appellant, sharing her characteristics as would affect the gravity of the provocation, to lose her self-control.

The subjective test: deprivation of self-control

69 In *Pathip Selvan* (at [38]–[39]), this Court held that deprivation of self-control for the purposes of Exception 1 did not require the cessation of mental processes or automatism, nor would the defence be foreclosed where the accused had been conscious of his actions at the material time. Instead, the court should prefer a less clinical approach that focuses on whether the offender had subjectively lost control over his mental faculties:

> 38 Having determined that the killing of the deceased was not premeditated, the next question which arises is whether the accused had experienced "sudden and temporary loss of self control" as a result of the provocation, which made him no longer a "master of his mind" … A close analysis of the accused's mental state during the killing is necessary to determine both why and whether he had lost self-control. …
>
> 39 … *There is no need for his mind to be completely blank or for there to be automatism when the deceased was stabbed to establish this partial defence.* In this regard, the Judge correctly determined that the accused's mental processes did not cease during the killing … *However, while the accused appeared at some level of consciousness to be aware of what was happening during the killing, this did not, without more, mean that he did not lose self-control. The human mind has several levels and streams of consciousness.*
>
> [emphasis added]

70 Although the inquiry into whether the Appellant had ceased to be the "master of her mind" was a subjective one, it nevertheless had to be addressed having regard to the available evidence. On our assessment of the evidence and the Judge's findings, we were satisfied that the Appellant had in fact been deprived of her self-control at the material time.

(1) The Appellant's contemporaneous accounts of having lost self-control

71 As a starting point, we noted that the Appellant was able to offer a coherent and consistent account to the police of how she had lost control of herself at the time she stabbed the Deceased.

72 To recapitulate, the Appellant first confessed to having stabbed the Deceased by her third statement of 29 June 2018 (*ie,* four days after the incident). That statement spanned less than three pages and only contained a brief statement of how the Appellant was "very angry" at the material time.

73 In her next (*ie*, fourth) statement of 30 June 2018, the Appellant added that she had started "shaking" after the Deceased had threatened her, and that she "didn't know how many times or for how long [she] had stabbed [the Deceased]."

74 These details were then repeated and elaborated on in the second of two statements given by the Appellant on 1 July 2018, the relevant parts of which we reproduce in full below:

> … When I heard [the Deceased] said "*you go back agent tomorrow*", I was angry so much and when she said that, I didn't know what happened in my head. Because of anger, I was shaking. I then grabbed the knife and I cannot see anything anymore. My whole body was shaking. [The Deceased] was still watching TV and talking in Indian language. I can hear it. My head is like very heavy, shaking, and yet I was afraid. My head felt very 'heavy' and I do not know how and why, I just went forward and stabbed [the Deceased]. I don't even know how I had went forward to her – whether I walked forward or did I ran forward.

75 In her seventh statement of 2 July 2018, the Appellant was asked to explain why she had decided to stab the Deceased. Her response was:

> I didn't decide. I didn't intend to kill [the Deceased] in my head at that time. I didn't know what happened in my head and I just grabbed the knife.

76 Taken in the round, these statements offered a consistent and fairly contemporaneous account of how the Appellant had lost control of herself at the material time. We were therefore minded to place considerable weight on them. In doing so, however, we should address two arguments that were made by the Prosecution.

77 First, the Prosecution directed our attention to parts of the Appellant's police statements by which she offered details of the Deceased's physical reactions to the attack (*eg*, the Deceased having moved only one arm); the manner in which the Appellant had stabbed the Deceased; and, crucially, how the Appellant only stopped stabbing the Deceased after she saw that the Deceased was no longer moving. The submission, therefore, was that the Appellant could only provide those details because she had fully possessed her faculties at the material time.

78 This argument, in our view, was not to the point. The aspects of the Appellant's statements referred to by the Prosecution were merely evidence of the fact that she had been conscious of her actions throughout the fatal attack. That much had already been conceded by the Appellant at trial. However, it was clear on the authority of *Pathip Selvan* (at [39]) that the Appellant's consciousness of her actions was not incompatible with a finding that she had been subjectively deprived of self-control for the purposes of Exception 1 (see [69] above).

79 Second, the Prosecution invited us to reject entirely the Appellant's account of the Deceased's provocation and the effect it had on her on grounds

that she was unworthy of credit. In this regard, emphasis was placed on the fact that the Appellant initially gave a false or embellished account of the incident to the police (see [14] above) and Dr Tan with a view to exculpating herself.

80 We acknowledged that in her first two statements to the police, the Appellant had concocted a wholly fictitious account of two men having killed the Deceased in order to exculpate herself. However, by the time of her fourth statement given on 30 June 2018, only five days after the killing, the Appellant was able to give a nuanced account of events which included details of the altercation and the Deceased's threat. The Appellant was also able to describe the effect that the threat had on her at the time.

81 We found it implausible that the Appellant should have, in essence, fabricated such details with a view to supporting a defence of grave and sudden provocation when that defence had never even been advanced until the present appeal. The credibility of those details was also enhanced against the backdrop of the Appellant's unreserved confession to having stabbed the Deceased. Moreover, the Appellant's account remained broadly consistent over time. It was true that certain embellishments had been made by the Appellant in her interview with Dr Tan. For instance, she had alleged that the Deceased had pressed a pair of scissors against her neck shortly before the stabbing (see [36] above), but this detail never surfaced in her statements to the police. On the whole, however, the embellishments were peripheral to the essence of the Appellant's account of the Deceased's threat and the loss of self-control it induced in her. There was never any departure from that aspect of the Appellant's statements. In short, we were prepared to place significant weight on what the Appellant had told the police from 29 June 2018 onwards given that it was contemporaneous, consistent, and inherently reliable.

(2) The circumstances surrounding the offence

82 The Appellant's self-reported accounts of having lost control over herself at the material time also comported with the objective circumstances that surrounded the commission of the offence.

83 In this connection, we noted that the attack resulted in 26 stab wounds of varying depths and at different parts of the Deceased's body (see [10] above). Certain of those wounds were, in fact, clusters of smaller stab wounds. It was on that footing that the Appellant submitted that the forensic evidence pointed towards the attack having been "frenzied" in nature, which in turn suggested that she was not in control of herself at the time. We agreed with this submission. We were also fortified in this view by the evident spontaneity of the offence and the absence of any premeditation on the Appellant's part. The attack was vicious, but it was not explicable as anything other than an immediate reaction to the Deceased's threat, which was described by the Judge as having been an "emotional, irrational" reaction on the Appellant's part (Judgment at [71]).

84 Nothing in the Appellant's actions after the attack disclosed any other possible motive for the offence. Indeed, the Appellant's post-killing conduct was consistent with the offence having been driven largely, if not wholly, by blind rage and unthinking impulse. The Prosecution emphasised that the Appellant had the presence of mind to retrieve her money and belongings by breaking into a locked cupboard; change into fresh clothes; and clean the knife she had used to stab the Deceased, all within the span of an hour (see [8]–[9] above). That was not, however, the full picture. From the Statement of Agreed Facts, it appeared that the Appellant had wandered aimlessly for nearly five

hours after she first visited her employment agency. She stopped only for food and drink before finally returning to the agency, where she was then arrested.

85 With that background in mind, it was clear to us that the Appellant's post-killing conduct was consistent overall with her reeling from the shock of having stabbed the Deceased on impulse. We considered the following exchange in the second of the Appellant's police statements given on 3 July 2018 to have been telling:

> Q35. In paragraph 37 of [your statement of 1 July 2018], you mentioned that you walked along a big main road with workers working to repair the road but however, you could not find a bus stop. It was only until after you have crossed an overhead bridge and a short walk later before you found a bus stop. Police's investigation suggests that you had walked past a number of bus stops during this journey. What do you have to say about this?
>
> Answer.
>
> 94. I didn't know. I felt dizzy and I walked, walked, walked. I didn't know I passed by bus stops.

86 There was nothing particularly calculated about the Appellant having changed her clothes and retrieved her belongings. The Appellant also washed the knife that she had used to stab the Deceased, but the knife was then left behind in the kitchen. Nothing was really done with a mindful view to concealing the offence. To the contrary, her actions in the "dizzy" aftermath of the attack suggested to us that she possessed no more than a modicum of mental composure. This, coupled with the frenzied nature of the attack, strongly supported the inference that the Appellant had been deprived of self-control when she inflicted the fatal wounds on the Deceased.

87 For these reasons, we concluded that the subjective test had been satisfied. In our assessment, sufficient evidence had been led at trial to warrant

a finding that the Appellant was so deprived of self-control that she was not the "master of her mind" at the time of the stabbing.

88 To be clear, we did not equate this with the Appellant having suffered from an abnormality of mind satisfying Requirement 1 of Exception 7. We noted at [47] above that a loss of self-control, though recognised as a manifestation of an "abnormality of mind", is not an "abnormality of mind" in and of itself on the *Byrne* definition. We accepted that the Appellant had been deprived of self-control *because of* the Deceased's provocation, but it was unnecessary to further inquire into whether that loss of self-control in the circumstances disclosed a state of mind "so different from that of ordinary human beings that the reasonable man would term it abnormal" (see [33] above). This is ultimately a reflection of the fact that Exceptions 1 and 7 afford separate and distinct defences to a charge of murder. The predicate fact of an offender's incapacity for self-control must ultimately be determined and then situated within the framework of each defence.

The objective test: gravity of the provocation

89 We turn now to the objective test. The Appellant's central argument was that she had been abused by the Deceased for some time prior to the stabbing, and that this was a feature of her circumstances that affected the gravity of the Deceased's provocation. That aside, the Appellant also invited us to take her other personal circumstances into account, *viz*. (a) her young age at the time of the offence; (b) her indebtedness to her agent; and (c) the fact that she was alone in a foreign country.

90 In response, the Prosecution submitted that the Judge's finding that the Appellant had been subjected to abuse was factually wrong. The Appellant's

allegations of abuse were not only unsubstantiated by any evidence but also contradicted by the testimony of Mr S and his family. It was thus submitted that "[t]he nature of the relationship between the Appellant and the Deceased prior to the day of the killing, which forms crucial background in assessing whether there was ongoing provocation, cannot be determined based on the evidence led at trial."

91 Although the evidence as to the nature of the relationship between the Appellant and the Deceased was unclear and somewhat ambivalent, we were ultimately unable to agree with the Prosecution's submission. The Judge was plainly satisfied that there had been *some* abuse prior to the fateful incident. For the reasons that follow, we did not think that this finding was plainly wrong or against the weight of the evidence.

92 For ease of reference, we reproduce the salient paragraphs of the Judgment (at [62]–[64]) set out in a section headed "Findings":

> **Findings**
>
> 62 I accept that the deceased had hit the accused (to get her attention, or to reprimand her), and that the deceased had also retaliated when the accused had accidentally hurt the deceased. I do not believe that the accused would have stabbed the deceased if there were just an isolated statement by the deceased, on the day in question, that the accused would be sent back to the agent. Rather, that statement was made after a period in which the deceased had scolded, hit, and hurt the accused.
>
> 63 But for the threat to send the accused back to the agent, however, the accused would not have stabbed the deceased. From what the accused said, the deceased's treatment of her would not, in itself, have caused her to stab the deceased. The accused did not report the deceased's treatment of her to her employer or his family members, or to her agent, or to her family. It seems that she was willing to tolerate such treatment, although she was hurt, sad, and felt unappreciated.

> 64 The accused however feared being sent back to the agent (and consequently back to her home country in debt), and when the deceased threatened to do so, that triggered the stabbing. As the accused told the police, she was "very angry" when the deceased said that; she took a knife, went to the deceased, and stabbed her.

93 As a starting point – and with respect to the Judge – we had some difficulty with his finding (at [62]) that the threat to send the Appellant back to her agent had been "made after *a period* in which the deceased had scolded, hit, and hurt the accused". What "a period" was intended to mean was unclear. In our view, that expression could have meant either a shorter period which only spanned the morning of the incident ("Scenario 1"), or a longer period that commenced prior to the date of the offence ("Scenario 2").

94 That the Judge might have had Scenario 2 in mind was consistent with the findings set out in the paragraph that followed (at [63]), and in particular his reference to the Appellant's failure to "report the [Deceased's] treatment of her" and her apparent "[willingness] to tolerate such treatment". If so, that finding would have been made on an insufficient basis. As we noted earlier, there was no objective evidence of the Deceased having abused the Appellant in the period leading up to the date of the killing (see [58] above). All that the Judge had been presented with was the Appellant's uncorroborated say-so. On appeal, the Appellant did not point to any specific evidence before the Judge that would have demonstrated the truth of her more far-reaching allegations. We were therefore unable to accept them and would have disagreed with the Judge insofar as he took a different view.

95 It would appear at first blush that Scenario 1 was open to the same objections that foreclosed Scenario 2. However, the Judge was clearly of the view that an isolated threat to send the Appellant back to her agent could not,

without more, have possibly moved her to perpetrate such violence on the Deceased. We agreed. Based on the evidence led at trial, the Appellant was a mild-mannered lady who was not given to temperamental outbursts and, still less, gratuitous violence. The Deceased's threat therefore had to have acquired its provocative force from something more.

96 Against that backdrop, it was entirely believable that there had been "a period" of abuse in the sense contemplated by Scenario 1 *ie*, in the morning prior to the attack. That much was accepted by the Judge, who specifically found that the Deceased had hit the Appellant "to get her attention, or to reprimand her" and that the Deceased "had also retaliated when the [Appellant] had accidentally hurt the [Deceased]" (at [62]).

97 These were both references to events that occurred on the morning of 25 June 2018, as recounted by the Appellant in her statements to the police. The Appellant explained that after she had accidentally dropped something on the Deceased's foot whilst tidying up a table, she:

> … felt something hard hitting on the right side of [her] head three times … Immediately after the hits, [the Deceased] then grabbed the front of [the Appellant's] hair and with this, [she] turned to face [the Deceased] because of the pull. [The Deceased] then slapped [the Appellant] hard once each on [her] left and right cheek. It was painful because [the Deceased] wore rings on her finger. [The Appellant] started to tear as [she] felt sad and very angry at [the Deceased] for hitting [her] …

98 The Appellant also added that, shortly after this altercation:

> … [The Deceased] was still nagging when I thought I heard her say "ka-chi, knife". She then walked over the altar and called out to me suddenly. I went over to her and she knocked me once on my head and said "*Go kitchen! Ka-chi, knife, take!*" It was not a hard knock and only then that I realised that I had missed her instruction …
>
> [emphasis in original]

99 Keeping in view the evidence as to the Appellant's temperament as well as the spontaneous and frenzied nature of the attack, we considered the Judge to have been justified in accepting her evidence as to what had transpired that fateful morning. There was hence no reason to interfere with these more limited findings.

100 Weighing the Deceased's acts of abuse alongside the Appellant's personal circumstances – in particular, her youth and immaturity and the challenge of adapting to living and working in a foreign country; her indebtedness to her employment agent; and her fear of being repatriated in those circumstances – we considered that an ordinary person of the Appellant's age, sex and characteristics would have been so provoked in the circumstances as to suddenly lose her self-control. In the premises, both the subjective and objective tests as articulated in *Pathip Selvan* were satisfied on the evidence adduced at the trial below.

Our decision on the appeal against conviction

101 To sum up, the Judge was entitled to reject the Appellant's defence of diminished responsibility in view of the evidence that was before him. As regards the Appellant's fresh defence of grave and sudden provocation, we were satisfied that the evidence led at trial sufficed to make out that defence.

102 We take this opportunity to reiterate that where the evidence led at a criminal trial discloses a defence not invoked by the accused, it remains the trial judge's duty, especially where capital charges are involved, to at least consider that alternative defence, barring any circumstances which would make it procedurally unfair to do so: *Mohd Suief* at [27]–[32]. In this case, the Judge made a number of findings plainly salient to the defence of grave and sudden

provocation but stopped short of considering whether that defence had been made out. It would have been preferable for the Judge to have considered that defence, but that was not done. It was, however, open to this Court to consider that defence in light of the evidence adduced below.

103 For these reasons, we allowed the appeal against conviction and substituted the Appellant's conviction on the charge of murder under s 300(*c*) of the Penal Code with one of culpable homicide not amounting to murder punishable under s 304(*a*) committed under grave and sudden provocation within the meaning of Exception 1.

The appeal against sentence

104 We turn then to the Appellant's sentence. Under s 304(*a*) of the Penal Code, the Appellant was liable to be punished with either: (a) imprisonment for life; or (b) imprisonment for a term extending to 20 years and a fine.

105 It was common ground between the Prosecution and the Defence that a sentence of life imprisonment was unwarranted in this case. We took the same view for the reasons given at [121] below. Having considered the authorities and the parties' submissions, we were further of the view that a sentence of 17 years' imprisonment was appropriate.

The parties' submissions on sentence

106 It was agreed between the Prosecution and the Defence that the seriousness of the Appellant's offence was such as to bring considerations of general deterrence and retribution to the fore, notwithstanding that rehabilitation remained a relevant consideration given her young age. The difference between

the parties was one of emphasis, and this was reflected in their respective submissions on sentence.

107 The Prosecution invited us to impose a sentence of 18 to 20 years' imprisonment. The Prosecution argued that the offence had been aggravated by: (a) the Deceased's vulnerability, both by reason of her advanced age and the circumstances in which she had been attacked; (b) the brutality of the attack; (c) the Appellant's attempts at concealing the offence and fleeing; and (d) the domestic context in which the offence had been committed.

108 The Prosecution also argued that the Appellant's culpability was situated on the higher end of the spectrum. The Appellant, though having momentarily lost control over herself, was nevertheless conscious of what she was doing at the material time. Moreover, she had resorted to violence notwithstanding that there were proper channels for seeking redress, such as informing her employers or agent about what the Deceased had allegedly said and done to her.

109 The Defence, on the other hand, submitted for an imprisonment term of 14 to 16 years. Central to the Appellant's sentencing position was our determination that the offence had been committed under grave and sudden provocation. It was argued that, insofar as the Deceased's provocation had deprived the Appellant of self-control, the Appellant's culpability for her actions was reduced. The sentence therefore had to be calibrated based on the gravity of the provocation.

110 On that footing, the Appellant argued that the gravity of the Deceased's threat to send the Appellant back to Myanmar in debt was best situated in the middle of the scale. Weighing that against the domestic context in which the

offence had been committed, the Appellant argued that 14 to 16 years' imprisonment was adequate in the circumstances of this case.

The sentencing principles

111 It appeared from the parties' submissions and our review of the authorities that there was no reported precedent dealing squarely with sentencing for the offence of culpable homicide committed under grave and sudden provocation. *Pathip Selvan* was the only case of fairly recent vintage in which that partial defence had been made out. Even then, the appellant in that case was sentenced to 20 years' imprisonment. The Court of Appeal did not publish its reasons for imposing the sentence.

112 The Prosecution and the Defence therefore relied principally on cases involving homicides perpetrated by domestic workers against their employers. Some of these, like *Public Prosecutor v Sundarti Supriyanto (No. 2)* [2004] SGHC 244, had been decided before s 304 of the Penal Code was amended in 2008 to extend the range of sentences available thereunder. For that reason, we did not think that much assistance could be derived from them.

113 We were also referred to *Dewi Sukowati v Public Prosecutor* [2017] 1 SLR 450 and *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699, both of which were concerned with s 304(*a*) of the Penal Code in its present form. These were not, however, cases where the partial defence of grave and sudden provocation had been established. Accordingly, there was no analysis in these cases as to how the Court should calibrate imprisonment terms in view of the partial defence having been made out.

114 On the whole, the cases cited to us offered little by way of guidance. In our view, it would have been unhelpful to approach them as sentencing

benchmarks for the purposes of this appeal. We therefore take the opportunity to articulate some broad guidelines that may be applied and developed in subsequent cases.

115 As a starting point, we agreed with the Defence's submission that the appropriate sentence had to account for the fact of the offence having been committed under grave and sudden provocation. As a partial defence to a charge of murder, grave and sudden provocation requires in the first instance a subjective loss of self-control by the offender. That factor is relevant to the Court's assessment of the offender's culpability and therefore the punishment to be imposed.

116 Where culpable homicide is committed under grave and sudden provocation, considerations of retribution and deterrence will ordinarily be attenuated to a degree that makes life imprisonment inappropriate as a response. Prevention and public protection should be the dominant considerations guiding a decision to impose a life sentence for such offences. Put another way, life imprisonment may be warranted where the offender presents a continuing threat to the safety of others.

117 Where an offence calls for a lesser sentence of up to 20 years' imprisonment, the calibration of that sentence will depend on the extent to which the offender's culpability has been diminished by the provocation in question. In this connection, the court should first objectively assess the gravity and suddenness of the provocation before weighing them against the subjective characteristics of the offender that may have rendered him more susceptible to the provocation (*eg*, youth or financial vulnerability)

118 Where the provocation was extreme in both its objective and subjective aspects, a significant reduction from the upper limit of 20 years' imprisonment may be called for. Factors tending towards such an outcome will include: serious and repeated abuse of the offender (whether physical or psychological) prior to the offence; the provocation having consisted in a threat (or the actual infliction) of serious physical harm to the offender; and any psychiatric conditions that may have led to the provocation having an outsized effect on the offender. By contrast, milder forms of provocation ought generally to attract only a modest reduction in sentence, or no reduction at all.

119 After ascertaining the appropriate reduction (if any) to be given on account of the provocation, the sentence should then be further adjusted for any other mitigating or aggravating factors not already taken into consideration (*eg*, timely pleas of guilt).

120 By way of illustration, *Pathip Selvan* may have been an instance where the deceased's provocation – which consisted in a bare insult to the offender's sexual prowess which was made by the deceased to justify her alleged infidelity – was insufficiently grave on an objective view to warrant a reduction in sentence. It also appears that, apart from the strained relationship between the offender and the deceased, there was no finding in *Pathip Selvan* as to any unusual circumstances or characteristics of the offender that may have exacerbated the effect of the provocation. To be clear, these general observations are based purely on our objective view of the salient facts of that case and are not to be construed as an *ex post* rationalisation of the sentence imposed, nor are they intended to lay down rules of any kind. We make them only to illustrate how the guidelines set out at [116]–[119] above may be applied. It also bears emphasising that those guidelines are only intended to

serve as starting points that may be departed from where the circumstances so require.

Our decision on the appeal against sentence

121 In the present case, we were satisfied that the Appellant presented no continuing threat to public safety or risk of re-offending. A sentence of life imprisonment was therefore unwarranted. We noted in any event that the Prosecution had not submitted for a sentence of life imprisonment.

122 We turned then to examine the provocation in this case, which consisted in the Deceased's threat to send the Appellant back to her agent the next day. It followed from our decision to allow the appeal that the Deceased's provocation was objectively sudden. There also appeared to be no dispute that it was indeed so.

123 We were also satisfied that the provocation was objectively grave insofar as it represented not only a threat to the Appellant's employment and livelihood, but also the inevitability of her repatriation to Myanmar in debt. On the other hand, the objective gravity of the provocation was tempered by the fact that it comprised a single verbal utterance.

124 As for the subjective aspect of the inquiry, we accepted that the effect of the Deceased's threat on the Appellant would have been amplified by the latter's youth, immaturity and financial vulnerability; her family's circumstances in their troubled homeland; and, to a lesser extent, the physical and verbal abuse she had suffered at the hands of the Deceased prior to the commission of the offence.

125 Weighing these considerations in the round, we were satisfied that the provocation was grave and sudden enough to warrant a modest reduction in sentence to between 16 and 18 years' imprisonment.

126 On the other hand, we considered that the Appellant's offence had been aggravated by her use of a weapon; the brutal nature of the attack on the Deceased; and the context in which the offence had been committed, *ie*, by a domestic helper in her employer's household. We did not accept, however, the Prosecution's suggestion that the Appellant had attempted to conceal the offence or evade arrest. As we noted at [86] above, the Appellant no doubt washed the knife she had used to stab the Deceased, but she then left that knife behind in the kitchen and did nothing else to interfere with the scene of the crime. No meaningful steps were taken by the Appellant to evade arrest in the hours after the killing. Moreover, the Appellant returned to her employment agency for a second time even though she must have known that she risked discovery or arrest in doing so. That was consistent with the Appellant's explanation to the police that she had returned with the intention of confessing to what she had done, although fear had eventually kept her from doing so until her third statement.

127 Having regard to the relevant sentencing considerations in this case, we considered it appropriate to impose a sentence of 17 years' imprisonment on the Appellant.

Conclusion

128 To recapitulate, we allowed the Appellant's appeal against conviction on the ground that the partial defence of grave and sudden provocation was reasonably available to her based on the evidence led at the trial. We therefore

substituted the conviction on the charge of murder under s 300(*c*) of the Penal Code with one of culpable homicide not amounting to murder punishable under s 304(*a*) committed under grave and sudden provocation within the meaning of Exception 1.

129 The Appellant was sentenced to 17 years' imprisonment on the substituted charge. The sentence was backdated to the date of the Appellant's arrest (*ie*, 25 June 2018).

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

Josephus Tan Joon Liang and Cory Wong Guo Yean (Invictus Law Corporation) for the appellant;
Kumaresan Gohulabalan, Sean Teh and Brian Tan (Attorney-General's Chambers) for the respondent.