

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 34

Criminal Case No 10 of 2017

Between

Public Prosecutor

And

BPK

JUDGMENT

[Criminal Law] — [Offences] — [Attempted murder]
[Criminal Law] — [Special exceptions] — [Provocation]

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Public Prosecutor

v

BPK

[2018] SGHC 34

High Court — Criminal Case 10 of 2017

Woo Bih Li J

31 January, 1–3, 9–10 February, 11–13 April, 17–18 April, 6–7, 10 July,
18 August; 9 October 2017

14 February 2018

Woo Bih Li J:

Introduction

1 On the morning of 20 December 2013, the accused (“the Accused”), attacked the victim (“the Victim”) with a knife and inflicted multiple stab and slash wounds to the Victim’s head, neck, chest, abdomen, back and arms. The Victim survived, albeit with permanent injuries. The Accused now faces one charge (“the Charge”) for attempted murder causing hurt under s 307(1) of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”):

You... are charged that you, on the 20th day of December 2013, at about 8.30 am, at the void deck of [a HDB block in the west of Singapore], did inflict multiple stab and slash wounds to [the Victim] on her head, neck, chest, abdomen, back and arms with a knife measuring about 33 cm, with such intention and under such circumstances that, if by that act you had caused the death of the said [Victim], you would have been guilty of murder, and by such act you did cause hurt to the said [Victim], and you have thereby committed an offence punishable under

Section 307(1) of the Penal Code (Chapter 224, 2008 Revised Edition).

2 The Prosecution’s case was that the Accused had attacked the Victim with the intention to kill her. The Defence’s primary arguments were that the Accused had, at the material time of the incident, neither the capacity to form intent, nor did he in fact have the intention to kill the Victim.

Facts

Background

3 The Accused is an Indian national. He took a 3-year diploma course in civil engineering in India, even though he stopped studying after only one year because of financial issues.¹ This diploma course was conducted in Tamil.² However, for 10 years prior to the diploma, he studied in a school in India in the English medium.³ It appears that the Accused mostly conversed in Tamil while he was in India.⁴

4 The Accused first came to Singapore sometime in 2011 and has since worked in various companies. At the time of the alleged offence, he was 30 years old and was employed as a healthcare attendant at a local hospital (“the Hospital”). It was not disputed that the scope of the job essentially related to housekeeping, cleaning, and serving meals to patients.⁵ The Accused’s proficiency in the English language apparently improved while he worked in Singapore.⁶

¹ NE Day 9, p 21, lines 26-32.

² NE Day 9, p 21, lines 33-34.

³ NE Day 9, p 35, lines 1-2.

⁴ NE Day 9, p 35, lines 13-18.

⁵ Exhibit D2, para 3; NE Day 4, p 26, lines 21-32.

5 At the time of the alleged offence, the Victim was 20 years old and a nursing student. She resided with her family in a HDB block in the west of Singapore (“the Block”).

Relationship between the Accused and the Victim

6 The Accused and the Victim became acquainted sometime in January or February 2013, while the Victim was attached to a ward of the Hospital where the Accused was a housekeeper.⁷ They got along well at the start.⁸

7 It was undisputed that the relationship between the Accused and the Victim became closer in March 2013.⁹ On the Victim’s account, the Accused’s attitude towards her gradually changed and he started behaving in a “mushy” manner towards her.¹⁰ Apparently, the Accused pursued her romantically and told her that he liked her even though he knew that the Victim had a boyfriend.¹¹

8 The Victim’s friend (“S”) recounted that the Accused initially did not appear to be serious in his pursuit of the Victim,¹² but subsequently became more persistent.¹³

9 The Victim testified that she initially decided to “play along with [the Accused]”, intending for this apparent relationship between her and the Accused

⁶ NE Day 9, pp 35-37.

⁷ AB41.

⁸ AB41.

⁹ NE Day 10, p 6, lines 10-16.

¹⁰ AB41.

¹¹ NE Day 3, p 79, lines 27-32.

¹² NE Day 3, p 79, lines 6-11.

¹³ NE Day 3, p 80, lines 3-17.

to be a “joke”.¹⁴ S confirmed that the Victim had confided in her that the Victim was not serious in pursuing a romantic relationship with the Accused.¹⁵ The Accused did not appear to have known this. S also accepted that the messages exchanged between the Victim and the Accused may suggest to a third party that the Victim was romantically interested in the Accused.¹⁶

10 The Accused claimed that his relationship with the Victim commenced in March 2013¹⁷ and had all along been a serious one. He also claimed that the Victim was the one who “got close” to him in March 2013.¹⁸ In March 2013, the Victim sent several messages to the Accused stating, amongst other things, “Ok da miss us... can’t wait to see u tmr”, “I love u...”, and “I want to be ur wife now”.¹⁹ The Victim also conceded that she had raised to the Accused on a few occasions in April 2013 the possibility of their getting married in the future.²⁰

The Accused discovers the Victim’s other relationships

(1) The Victim and C

11 Sometime in the latter half of 2013, the Accused discovered that the Victim had sent to a colleague, C, the “same type of messages” that she had been sending to the Accused.²¹ The Accused said that he was upset and confronted the Victim directly.²² He felt cheated.²³ He did not speak to her

¹⁴ AB41.

¹⁵ NE Day 3, p 85, lines 12-20.

¹⁶ NE Day 3, p 86, lines 28-31.

¹⁷ NE Day 12, p 58, lines 2-16.

¹⁸ NE Day 10, p 6, lines 10-12.

¹⁹ NE Day 6, pp 23-25; AB394; AB409-410.

²⁰ NE Day 5, p 60, lines 11-13; NE Day 6, p 11, lines 17-22; Exhibit D4, p 5.

²¹ NE Day 10, p 9, line 6.

thereafter for three days.²⁴ Apparently, the Accused only forgave the Victim after she called him and apologised.²⁵

(2) The Victim, K and SH

12 At the outset, I note that it transpired in the course of the trial that the person known to the Accused as “SH” was in fact K.²⁶ K was the younger brother of SH.²⁷ The Prosecution pointed out this confusion of identities to the Accused at trial and the Accused confirmed that the person he thought was “SH” had in fact testified in Court earlier and introduced himself as K.²⁸ Thus, for consistency of reference, I will hereinafter use the name “K” in lieu of the Accused’s reference to “SH”.

13 Some context is necessary to appreciate the relationship between the Accused, the Victim, and K. Apparently, sometime before October 2013, the Accused had engaged in a conference call with the Victim and K. This conference call was arranged by the Accused on the Victim’s request.²⁹ At that time, the Accused was told by the Victim that K was the Victim’s relative.³⁰ K confirmed that this conference call happened, but added that he had told the Accused that the Victim was already in a relationship and was not interested in

²² NE Day 10, p 10, lines 13-17.

²³ NE Day 12, p 7, lines 1-7.

²⁴ NE Day 10, p 9, lines 12-16.

²⁵ NE Day 10, p 9, lines 12-16.

²⁶ Defence’s Closing Submissions at para 5.5; NE Day 10, pp 16-17.

²⁷ NE Day 6, p 53, lines 9-10.

²⁸ NE Day 10, pp 15-17; NE Day 12, lines 1-4.

²⁹ NE Day 10, p 18.

³⁰ NE Day 10, pp 18-19; NE Day 12, p 9, lines 22-24.

the Accused.³¹ The Accused denied that K had told him that the Victim was involved in a romantic relationship with someone else.³² At that time, he did not doubt the Victim's account that K was her relative.³³

14 Subsequently, in October 2013, the Accused came to find out that the Victim was sending intimate messages to K.³⁴ The Accused testified that he did not know how he felt when he realised that the Victim was communicating with K.³⁵ However, he maintained that he did not think that the Victim was a "cheating girl".³⁶ In fact, during a fire-walking festival around then, the Accused claimed to have taken part in the festival and prayed for the Victim.³⁷

The fall out between the Victim and the Accused

(1) The Victim's account

15 According to the Victim, she decided that she would stop "playing along" with the Accused and no longer wanted to have any contact with him sometime in the second half of 2013.³⁸ Thus, she apologised to the Accused in person and told him that "it was a joke all along".³⁹

³¹ NE Day 8, lines 7-17.

³² NE Day 10, p 20, lines 5-17.

³³ NE Day 10, p 18, lines 23-32.

³⁴ NE Day 12, pp 8-9.

³⁵ NE Day 12, p 9, lines 14-31.

³⁶ NE Day 10, p 22, lines 21-31; AB227, S/N 25.

³⁷ NE Day 10, p 22, lines 11-17.

³⁸ NE Day 6, p 35.

³⁹ AB41; NE Day 5, p 28, lines 25-26.

16 The Accused reacted to the Victim's apology with denial and anger. He harassed her by making repeated calls to her and her friends.⁴⁰ The Victim's friend, S, also recounted that the Accused had called her after the Victim stopped talking to him. S told the Accused to stop calling her (S) and to stop disturbing the Victim.⁴¹

17 Despite being told by the Victim to stop disturbing her,⁴² the Accused continued to call her up to 30 to 40 times a day and send multiple messages to the Victim, telling the Victim variously that "... I want want u back..." and that "U are the cheating girl", "U cheat my money".⁴³ On 17 November 2013, the Accused also sent a message to the Victim saying, "Now u going to sofer",⁴⁴ which the Victim understood to mean "Now, you are going to suffer".⁴⁵ A transcript of these messages was adduced in Court. The transcript further indicated that the Victim's last message to the Accused was on or around 17 November 2013.⁴⁶ Even though the Victim had blocked the Accused's number on her phone,⁴⁷ the Accused continued to contact her using another number.⁴⁸

⁴⁰ AB41.

⁴¹ AB55; NE Day 3, p 80, lines 3-13.

⁴² NE Day 5, p 32, lines 21-27.

⁴³ AB227, S/N 24, 25, 27.

⁴⁴ AB227, S/N 20.

⁴⁵ NE Day 5, p 31, lines 8-14.

⁴⁶ NE Day 5, p 33, lines 3-7.

⁴⁷ NE Day 5, p 31, lines 1-7; NE Day 10, p 27, lines 10-26.

⁴⁸ NE Day 5, p 30, line 28; NE Day 5, p 11, lines 11-15; NE Day 10, pp 26-27; NE Day 12, p 14, lines 19-29.

18 In addition, around September or October 2013, the Accused apparently accosted the Victim while she was walking home, and she had to beg him to be let go.⁴⁹ The Accused also threatened to turn up at the Victim's school or home, and to upload her photographs on Facebook with statements that she was his girlfriend.⁵⁰

19 Apparently, the Victim had also borrowed a sum of around \$50 to \$100 from the Accused. The Accused in his messages to the Victim accused her of cheating him of his money (see [17] above). According to the Victim, she tried to transfer the money back to the Accused rather than hand him cash in person in order to retain some evidence that she had returned the money. However, whenever she asked the Accused for his account number the Accused would suggest a meet up in person. The Victim was reluctant to accede to such a meeting.⁵¹

20 In her conditioned statement, the Victim also recounted an undated incident when she gave in and met the Accused in person. When they met, she apologised to him and told him to forget everything. He turned aggressive and started pulling her hand and refused to let her go. He released her only when she shouted at him to let go, and thereafter stopped following her only after she warned him that she would call the police if he continued to do so.⁵²

⁴⁹ NE Day 5, p 42, lines 16-20.

⁵⁰ NE Day 5, p 29, lines 1-5; NE Day 5, p 32, lines 6-12.

⁵¹ NE Day 5, p 38, lines 5-27.

⁵² AB42.

21 The Victim's evidence was that she did not report the harassment and threats of the Accused to the police because the Accused was supporting his family back in India and she did not want to affect his rice bowl.⁵³

(2) The Accused's Account

22 The Accused denied being told by the Victim that she had only been playing around with him and that it was all a joke.⁵⁴ When asked whether the Victim had made it clear to him by September or October 2013 that she no longer wanted to have anything to do with him, the Accused maintained that he could not remember.⁵⁵

23 Nevertheless, the Accused accepted that he was angry in or around December 2013, which was the month in which the alleged offence occurred.⁵⁶ The targets of and reasons for his anger were not entirely clear. One reason for his anger was because, on 19 December 2013, the Victim's father had shouted at the Victim for calling K instead of the police while the Accused was outside the Victim's residence. Because of this, the Accused became angry with the Victim's father for having "said wrong things about [the Victim]".⁵⁷ Another target of the Accused's anger was K, because K had told him "Do you think [the Victim] is your wife? She is my wife and also my brother's wife".⁵⁸

⁵³ AB42.

⁵⁴ NE Day 12, p 54, lines 18-21; NE Day 12, p 58, lines 21-23.

⁵⁵ NE Day 10, p 10, lines 29-31; p 11, lines 13-17; p 15, lines 4-5.

⁵⁶ NE Day 10, p 27, lines 31-32; NE Day 10, p 28, line 1.

⁵⁷ NE Day 12, p 17, lines 17-25.

⁵⁸ NE Day 12, p 16, lines 9-13.

24 As regards the Victim, the Accused's evidence was unclear. He initially testified that he was angry with the Victim for mingling with "such people" like K even though she had told the Accused that K was only a relative.⁵⁹ But he later denied that he was angry with the Victim for ignoring him and cheating on him,⁶⁰ or that he was angry with the Victim at all.⁶¹ When pressed, the Accused vacillated on his evidence as to whether he was angry or upset *with the Victim* in December 2013.⁶²

25 In any event, the Accused stood by his evidence that even in December 2013, he still loved the Victim and intended to marry her.⁶³ Just as he had in the past forgiven her for her errors when she apologised, he did not think that the Victim was a "cheating girl".⁶⁴ The Accused could not remember the reason why he sent the accusatory messages (see [17] above) to the Victim, because by the time he gave evidence in April 2017, those messages had been sent some 3.5 years ago.⁶⁵ The Accused accepted that the Victim had blocked his original phone number on her handphone,⁶⁶ and that, as a result, he had to call the Victim using his other number,⁶⁷ but denied that this meant the Victim did not want to have anything to do with him.⁶⁸ He claimed that he had also blocked the Victim's number on occasion.⁶⁹ Further, even though he had asked the Victim

⁵⁹ NE Day 12, p 17, lines 25-31.

⁶⁰ NE Day 12, p 18, lines 26-31.

⁶¹ NE Day 12, p 19, lines 10-32.

⁶² See also NE Day 12, p 56, lines 3-10.

⁶³ NE Day 10, pp 11-16; NE Day 12, p 16, lines 1-8.

⁶⁴ NE Day 10, pp 11-16.

⁶⁵ NE Day 10, p 23, lines 6-8.

⁶⁶ NE Day 10, p 26, lines 27-30.

⁶⁷ NE Day 10, p 27, lines 10-21; NE Day 12, p 14, lines 19-29.

⁶⁸ NE Day 10, p 27, lines 27-30.

to return the loan that she had taken from him, he did not intend to accept the money from her even if she returned it.⁷⁰

26 In the Accused's words, "Some days, we will fight; some days, we will patch back".⁷¹ He continued to deny that by December 2013, the Victim did not want to have anything to do with him.⁷² He also denied that it was clear, based on the events on 19 December 2013, that the Victim was not going to marry him.⁷³ As at 19 December 2013, which was one day before the alleged offence, the Accused considered that the Victim "was a wife only to [him] and no one else".⁷⁴

Two other incidents

27 During the fall out between the Accused and the Victim, two further sets of events occurred: (a) the Accused purportedly performed an act of self-harm to prove his love for and faithfulness to the Victim; and (b) the Accused visited the Victim's flat three times and sought her hand in marriage on at least two of these occasions. Even though these events occurred within the same time frame as the fall out between the Victim and the Accused (*ie*, second half of 2013), they do not fit neatly into the narrative set out above. Thus, I elaborate on the parties' respective accounts of the two sets of events here.

⁶⁹ NE Day 10, pp 25-26.

⁷⁰ NE Day 10, pp 28-29.

⁷¹ NE Day 12, p 5, lines 23-30.

⁷² NE Day 12, p 27, lines 7-9.

⁷³ NE Day 12, p 31, lines 1-3.

⁷⁴ NE Day 12, p 33, lines 13-17.

(1) Purported incident of self-harm

28 According to the Accused, there was an incident in September 2013 when he had gone to the victim's workplace, used a paint scraper to cut himself, and then showed his wound to the Victim. He claimed to have done so to prove that he and the Victim loved each other because the Victim was "suspecting" him at that time.⁷⁵ Apparently, after the incident, the Victim told him not to do such crazy things.⁷⁶

29 The Victim denied that there had been such an incident of self-harm.⁷⁷ A photo depicting a close-up shot of what appears to be a deep cut wound was extracted from the Accused's handphone and put by the Defence to the Victim in cross-examination as contrary evidence.⁷⁸ The Victim's response was that she had not seen the photo prior to this trial.⁷⁹ Neither the Prosecution nor the Defence asked the witness who had examined the Accused's handphone and extracted the photo to explain how the witness's tabulated forensic report should be understood.⁸⁰ Thus, apart from the fact that the photo exists, no other details could be gleaned regarding the circumstances under which the photo came to be found in the Accused's handphone.

(2) Visits to the Victim's home prior to the alleged offence

30 It was common ground that, between October and December 2013, the Accused had gone to the Victim's unit at her Block on three occasions. The

⁷⁵ NE Day 10, pp 11-13.

⁷⁶ NE Day 10, p 14, lines 24-26.

⁷⁷ NE Day 6, pp 47-48.

⁷⁸ NE Day 6, pp 48-50; AB210, S/N 66; Exhibit D7.

⁷⁹ NE Day 6, p 49, lines 7-17.

⁸⁰ See NE Day 4, pp 68-77.

dates of the first two visits were not established, but the third visit took place on 19 December 2013, one day before the alleged offence.

THE VICTIM'S ACCOUNT AND HER PARENTS' EVIDENCE

31 According to the Victim, the Accused was drunk on all three occasions. He banged on the gate, scolded the Victim's parents in vulgarities, and asked her father to open the door. The father refused to do so. Further, the Accused also asked the father for permission to marry the Victim and bring her back to India. The Victim's father rejected this and told the Accused that the Victim had a boyfriend whom the family wanted her to marry.⁸¹

32 On the third visit, the Accused was heavily drunk and behaved more violently than before.⁸² The Victim's family called the police.⁸³ The Victim also called K for help. Upon arrival, K brought the Accused downstairs. According to K, while they were in the lift of the Block, the Accused referred to the Victim as "my wife" in Tamil and also told K that he wanted to marry the Victim and bring her to India.⁸⁴ K brought the Accused to the main road and the police took over. After he was interviewed by the police, the Accused left without further incident.⁸⁵

33 The Victim's mother and father corroborated the fact that the Accused had visited their unit on 19 December 2013 and asked for the Victim's hand in marriage. The Accused appeared drunk and stood outside their unit, but left after

⁸¹ NE Day 5, p 43, lines 6-20.

⁸² NE Day 1, p 60, lines 6-21.

⁸³ NE Day 5, p 45, lines 12-32; p 46, line 1.

⁸⁴ NE day 8, p 27, lines 12-27.

⁸⁵ NE Day 9, p 17, line 5.

they called the police.⁸⁶ According to the Victim's father, this was the second occasion that the Accused had come to their unit.⁸⁷

THE ACCUSED'S ACCOUNT

34 The Accused accepted that he had visited the Victim's unit on those three occasions, but his account of what had happened there was different.

35 For his two earlier visits, the Accused testified that he had intended to propose to the Victim, but, on the one occasion when her parents were around, he was rejected by them. On that occasion, the Victim's father also commented that he looked like a gardener.⁸⁸ However, the Victim herself later called the Accused and assured him that she nevertheless intended to marry him.⁸⁹ On the other occasion, the Victim's parents were not around and the Accused alleged that he had engaged in consensual sexual conduct with the Victim.⁹⁰

36 For the third visit on 19 December 2013, the Accused said that he had been invited by the Victim to her unit. He could not remember the reason for the invitation, but maintained that he had gone to show the Victim a chain and a ring that he had bought even though he apparently did not bring the chain and ring along with him.⁹¹ When asked whether he had gone to the Victim's unit to propose to her, the Accused initially stated that he could not remember, but later accepted that this was the case when shown a psychiatric report by the Winslow

⁸⁶ AB43.

⁸⁷ AB45.

⁸⁸ NE Day 12, p 24, lines 16-17; NE Day 12, p 29, lines 12-15.

⁸⁹ NE Day 12, p 24; NE Day 12, p 28, lines 14-16.

⁹⁰ Exhibit P65, para 8; NE Day 12, p 56, lines 20-25.

⁹¹ NE Day 12, p 22, lines 10-23.

Clinic recording that “the defendant went to the victim’s house to tell her about the gifts he bought for her and his intention to marry her”.⁹² According to the Accused, he did not behave aggressively,⁹³ and he did not know why the Victim had called K.⁹⁴ 19 December 2013 was also the first time the Accused saw K in person when K subsequently arrived.⁹⁵ According to the Accused, K then informed him “Do you think [the Victim] is your wife? She is my wife and also my brother’s wife” (see [23] above).

37 Notably, unlike the previous two visits, the Victim did not call the Accused after his visit to assure him that she intended to marry him after he left the unit.⁹⁶ Nor did the Victim say or do anything on 19 December 2013 to indicate that she was going to marry him.⁹⁷

The alleged offence

The Victim’s account and her parents’ evidence

38 The Victim recounted that on 20 December 2013, at or about 8.30am, she left her home to go to school. She was texting on her handphone while exiting the lift, and as she was doing so she felt someone grab her left shoulder from behind.⁹⁸ She panicked when she turned around and saw the Accused holding a knife.⁹⁹ The Accused asked the Victim “Block pinadi vaa di” in Tamil

⁹² Exhibit D2, para 15.

⁹³ NE Day 12, p 28, lines 10-12.

⁹⁴ NE Day 12, p 27, lines 22-24.

⁹⁵ NE Day 10, p 15, lines 18-20.

⁹⁶ NE Day 12, p 29, lines 17-20.

⁹⁷ NE Day 12, pp 31-32.

⁹⁸ NE Day 5, p 20, lines 10-15.

⁹⁹ NE Day 5, p 21, lines 1-11.

which meant “Come behind the block”.¹⁰⁰ However, the Victim refused and asked the Accused to talk where they were.¹⁰¹ According to the Victim, the Accused did not tell her that he wanted to kill himself,¹⁰² Nor did the Accused smell of alcohol.¹⁰³

39 Apparently, the Accused then grabbed the Victim with his right hand and held the knife in his left hand.¹⁰⁴ The Victim struggled and asked the Accused “why are you doing this kind of things? It is very painful, stop it”.¹⁰⁵ At that point, the Accused swung his left hand and stabbed the Victim in her back. The Victim turned around and tried to use her hands to push the Accused away, but the Accused was too strong.¹⁰⁶ The Accused swung his hand again and stabbed the Victim in the abdomen.¹⁰⁷ The Victim struggled and tried to get away, but the Accused overpowered her.¹⁰⁸

40 As the pain set in, the Victim fell to the ground and eventually ended up lying down in a supine position. The Accused sat on the Victim’s abdomen, with his legs astride the Victim.¹⁰⁹ Then, as the Accused continued to swing the knife with his right hand towards the Victim’s neck, the Victim tried to protect herself by grabbing hold of the knife blade with her left hand.¹¹⁰ In the ensuing

¹⁰⁰ AB40.

¹⁰¹ NE Day 5, p 21, lines 5-8.

¹⁰² NE Day 6, p 55, lines 7-8.

¹⁰³ NE Day 6, p 54, lines 25-32.

¹⁰⁴ NE Day 6, p 54, lines 19-22.

¹⁰⁵ NE Day 6, p 55, lines 17-28.

¹⁰⁶ AB40.

¹⁰⁷ AB40.

¹⁰⁸ NE Day 5, p 21, lines 20-31.

¹⁰⁹ NE Day 5, p 22, lines 1-21; AB40.

struggle, the Victim managed to block the swing but sustained further injuries on the left arm and below her chin.¹¹¹ The Victim recalled that, at some point during the attack, the Accused missed her and hit the knife against the floor.¹¹²

41 During this attack, the Accused shouted “saavudi” in Tamil, which meant “die”.¹¹³ The Accused then said in Tamil “If I can’t have you, no man should have you”.¹¹⁴ The Victim said “Stop doing this because it’s very painful”, but the Accused continued to slash her.¹¹⁵ As the Victim lay in a supine position on the floor and started losing strength, she screamed for her parents.¹¹⁶

42 The Victim’s father and mother heard her screams and rushed down to the void deck of the Block.¹¹⁷ The Victim’s father testified that when he arrived at the scene, he saw the Accused on top of his daughter with a knife in his right hand.¹¹⁸ The father quickly rushed towards the Accused and pushed him away. The Accused’s knife dropped on the floor and his shirt tore in the ensuing struggle. The father tried to grab onto the Accused but the Accused managed to run away.¹¹⁹

¹¹⁰ NE Day 5, p 22, lines 1-10; p 23, lines 2-4.

¹¹¹ NE Day 5, p 25, lines 1-15.

¹¹² AB41.

¹¹³ NE Day 5, p 23, lines 12-32.

¹¹⁴ NE Day 5, p 23, lines 12-32; p 24, line 1.

¹¹⁵ NE Day 5, p 24, lines 5-21.

¹¹⁶ NE Day 5, p 25, line 16-17; NE Day 6, p 58, lines 7-10.

¹¹⁷ AB43.

¹¹⁸ AB45.

¹¹⁹ AB45.

43 The Victim's mother corroborated the father's account. She testified that when she reached the ground floor of the Block, she saw the Victim lying on the ground with the Accused sitting at her waist. The Accused had a knife in his right hand and used his left hand to hold onto the Victim's neck. She saw the Victim's father run towards the Accused and try to pull him away.¹²⁰ The Accused dropped the knife and ran away. The mother gave chase for some distance but gave up when the Accused ran into the blocks; she then went back to attend to the Victim.¹²¹

44 The Victim denied the Accused's account of the incident. In particular, she denied pulling the Accused's t-shirt,¹²² and denied kissing the Accused and telling him that she wanted to marry him but that her parents were against it.¹²³ Further, she testified that, during the attack, the Accused did not cry but "just seem very angry".¹²⁴ In relation to whether there had been a phone call made to her handphone during her conversation with the Accused after she walked out of the lift (see [49] below), the Victim acknowledged this as a possibility but said that she was not aware of any call made to her then.¹²⁵ She also could not remember the wallpaper which the Accused alleged to have seen on her handphone (see [49] below).¹²⁶

¹²⁰ AB43.

¹²¹ AB43.

¹²² NE Day 6, p 57, lines 27-32.

¹²³ NE Day 6, p 57, lines 29-31.

¹²⁴ NE Day 6, p 57, lines 27-29.

¹²⁵ NE Day 6, p 57, lines 2-10.

¹²⁶ NE Day 6, p 57, lines 19-23.

The Accused's account

45 The Accused testified that after returning to his residence from the Victim's unit on 19 December 2013, he took a knife from his flat, concealed it in his sock on his right leg, and later went back to the Block.¹²⁷ His initial intention was to find the Victim and commit suicide in front of her.¹²⁸ Apparently, the Accused was triggered into wanting to do so because K had told him that the Victim was "also a wife" to K and K's brother (see [36] above).¹²⁹ By committing suicide in the Victim's presence, the Accused believed that the Victim would realise how much he loved her and how wrong K had been.¹³⁰

46 Thereafter, the Accused proceeded to the vicinity of the Block, where he consumed more alcohol and fell asleep at the open car park. He woke up in the early hours of the morning on 20 December 2013, then proceeded to the void deck of the Block to wait for the Victim. He fell asleep there.

47 Slightly after 7 am on 20 December 2013, Gandhi Rajesh Kumar ("Mr Gandhi"), who was the Accused's supervisor, called the Accused on his handphone as he did not turn up for his morning shift of work. The Accused did not pick up the call. At 7.16 am, the Accused returned the call and explained to Mr Gandhi that he had not turned up as he thought he was on the afternoon shift. Mr Gandhi scolded the Accused.¹³¹ The Accused continued waiting at the void deck of the Block.¹³²

¹²⁷ NE Day 12, p 35, lines 26-30.

¹²⁸ NE Day 9, pp 31-32; NE Day 12, p 36, lines 11-15.

¹²⁹ NE Day 12, p 30, lines 15-18.

¹³⁰ NE Day 12, p 56, lines 14-19.

¹³¹ NE Day 7, pp 8-10.

¹³² NE Day 12, p 39, lines 11-12.

48 Later in the morning of 20 December 2013, the Accused opened his eyes and suddenly saw the Victim come out of the lift.¹³³ He went forward and told the Victim that he would like to speak to her, and that he did not wish to live.¹³⁴ The Victim responded by scolding the Accused: “Are you crazy?” and “Why are you saying all these things”.

49 During this conversation, the Victim received a phone call or calls, which she cut off because she was talking to the Accused.¹³⁵ At this time, the Accused caught sight of a wallpaper on the Victim’s handphone.¹³⁶ This wallpaper was a photo of the Victim with K, where K’s left arm was around the Victim’s shoulder, as if they were hugging while facing each other.¹³⁷ From that point in time, he “could not remember what happened and... felt someone shaking my shirt”.¹³⁸

50 The next thing the Accused realised was that blood was coming out from the Victim’s face, and she was telling him that “I want to marry you but my parents do not allow that.”¹³⁹ The Victim then apparently kissed the Accused and closed her eyes.¹⁴⁰ The Accused then “made her lay down”¹⁴¹ because he could not drop her.¹⁴²

¹³³ NE Day 12, p 39, lines 30-32.

¹³⁴ NE Day 12, p 40, lines 1-4.

¹³⁵ NE Day 12, p 40, lines 4-9.

¹³⁶ NE Day 6, p 57, lines 2-3.

¹³⁷ NE Day 12, pp 37-38.

¹³⁸ NE Day 9, p 23, lines 23-30; NE Day 12, p 38, lines 24-30.

¹³⁹ NE Day 9, p 38, lines 18-25; NE Day 12, p 38, lines 25-30.

¹⁴⁰ NE Day 9, p 24, lines 1-15.

¹⁴¹ NE Day 12, p 38, line 30.

¹⁴² NE Day 12, p 43, lines 8-14.

51 At this point, the knife was on the floor by their side.¹⁴³ The Accused searched for the knife, intending to use it to commit suicide, but realised that the tip of the knife was bent.¹⁴⁴ The Accused tried to straighten it. However, he did not eventually manage to commit suicide. The Victim's father soon arrived at the scene and punched or kicked the Accused.¹⁴⁵

52 The Accused then picked up the Victim's handphone which was lying on the floor and ran away from the scene.¹⁴⁶ His intention was to go to the police station to surrender himself.¹⁴⁷ When asked why he did not stay at the scene if he intended to surrender to the police, the Accused said that he did not know.¹⁴⁸

53 The Accused denied the Victim's account of the incident. He denied telling the Victim to go behind the Block with him.¹⁴⁹ In relation to whether he was stabbing the Victim, how many times he was stabbing her, and what he was shouting while stabbing her, the Accused maintained that he did not remember what had transpired after he saw the Victim's wallpaper.¹⁵⁰

Unrelated witnesses

54 A total of 15 First Information Reports were lodged on 20 December by members of the public in relation to the attack.¹⁵¹ Several witnesses who were

¹⁴³ NE Day 12, p 43, lines 18-21.

¹⁴⁴ NE Day 12, p 43, lines 8-14.

¹⁴⁵ NE Day 12, p 36, lines 2-6; NE Day 12, p 43, lines 8-14; AB40; AB43.

¹⁴⁶ NE Day 12, p 44, lines 15-19.

¹⁴⁷ NE Day 12, p 44, lines 15-19.

¹⁴⁸ NE Day 12, p 44, lines 27-29.

¹⁴⁹ NE Day 12, p 40, lines 17-24.

¹⁵⁰ NE Day 12, p 41.

¹⁵¹ AB528-542.

not related to the Victim or the Accused also testified as to various details of the incident between the time period from 8.00 am¹⁵² to 9.05 am¹⁵³ on 20 December 2013. Based on their testimonies, at or around 8.30 am on 20 December 2013, a female voice could be heard screaming hysterically.¹⁵⁴ An Indian woman lay on the pathway on the ground floor of the Block. She had blood all over the upper part of her body. An Indian man was sitting on her body and hitting her, although it was not clear to the witnesses if he was holding any weapon.¹⁵⁵ Thereafter, an older Indian man and an older Indian woman arrived at the scene. The older Indian man shouted at the first Indian man and pushed him away.¹⁵⁶ The older Indian man struggled with the first Indian man for a few seconds, before the first Indian man ran across the street to the main road where he appeared to be trying to flag a taxi.¹⁵⁷ The first Indian man was then confronted by other unrelated eye-witnesses until the police arrived and arrested him.¹⁵⁸

55 In particular, one Mohamed Hanif Bin Firus (“Hanif”) stated in his conditioned statement that on 20 December 2013 after 8.40 am, while driving along Jurong West Street 42, he saw an Indian man dashing across the street topless. After he reached the carpark of the Block and found out that an Indian man had earlier slashed an Indian woman and fled the scene, he realised that he might have just seen the assailant and thus went to look for the assailant in his car. He next saw the assailant along Jurong West Avenue 1 and observed that a

¹⁵² AB47.

¹⁵³ AB49.

¹⁵⁴ AB49.

¹⁵⁵ AB53; AB49.

¹⁵⁶ AB47.

¹⁵⁷ AB47; AB 49.

¹⁵⁸ AB47.

Chinese man was trying to stop the assailant from running away. He immediately approached the assailant. By then, the assailant had stopped running but was “very aggressive and hostile”. When Hanif asked the assailant what had happened, the Accused admitted to slashing the Indian girl because she had cheated on and had rejected him on a number of occasions.¹⁵⁹

56 The Chinese man mentioned by Hanif appears to be one Tay Christopher Charles (“Christopher”). According to Christopher, he was driving in the vicinity when he saw the Accused running along the road topless and a lady chasing after him shouting for him to stop. Christopher decided to give chase to the Accused. He thus stopped his car and pursued the Accused on foot. When the Accused saw Christopher, the Accused tried to run away but Christopher managed to catch up. Eventually, Christopher stopped the Accused and called the police hotline. He then told the Accused to sit down as the police were on their way. The Accused repeatedly told Christopher in English that he would go to the police station himself. A few minutes later, a Malay man (presumably Hanif) arrived and asked the Accused why he had hurt the girl. Christopher could not recall what the Accused’s response was. Until the arrival of the police, the Accused did not resist or try to escape.¹⁶⁰

Arrest and investigation

Arrest

57 On information provided by eye-witnesses to the incident, Station Inspector Irwan Sumarto Bin Ibrahim (“SI Irwan”) and his partner, Special Constable Sergeant Syamil Siddiq Bin Abdul Rahim, spotted the Accused being

¹⁵⁹ AB52.

¹⁶⁰ AB54.

stopped by two men in the vicinity of the Block.¹⁶¹ The Accused was observed to be bare-bodied, with his hand, body, and jeans all stained with blood. The officers placed the Accused under arrest and placed him in a police vehicle.

58 It appears that subsequently, upon the arrival of other police officers, SI Irwan and Staff Sergeant Khairul Arifin Bin Mohd Yasin (“SSGT Khairul”) interviewed the Accused.

59 According to SSGT Khairul’s conditioned statement, the Accused admitted that he had stabbed the Victim with a knife that he brought from home.¹⁶² The Accused then explained that he hid the knife in the sock of his right leg, and had been drinking beer at the location of the incident since the night before.¹⁶³ Further, the Accused said that he had brought the knife as he wanted to kill the Victim because she cheated on him, and that he had intended thereafter to kill himself as the Victim was his life.¹⁶⁴ SSGT Khairul’s conditioned statement was admitted without his attendance in Court as the Defence did not require to cross-examine him.

60 SI Irwan testified that he had asked the Accused what had happened and the Accused said “to the effect, in broken English, that he had stabbed a woman with a knife... [because] the woman had betrayed him and so she must die.”¹⁶⁵ The words “so she must die” were the Accused’s own, but the word “betrayed” was SI Irwan’s conclusion because the Accused mentioned that he had spent time and money on the Victim and mistaking that the Victim had feelings for

¹⁶¹ AB69; AB71-72.

¹⁶² AB62-63.

¹⁶³ AB62-63.

¹⁶⁴ AB63.

¹⁶⁵ AB69; NE Day 2, p 4.

him even though she did not eventually want to marry him.¹⁶⁶ SI Irwan accepted that he had overlooked putting this interview in his field diary or pocketbook because his priority was to preserve the incident scene and there were members of the public around.¹⁶⁷ The first time SI Irwan put onto record what the Accused had told him was by way of a statement provided to the Investigating Officer of the case around one week after the incident.¹⁶⁸

61 The Accused denied the contents of this conversation. He claimed that after running from the scene, he intended to surrender himself to the police. He blocked the police car when he saw it.¹⁶⁹ He denied telling SI Irwan that because the Accused could not marry the Victim, she must die.¹⁷⁰

62 Subsequently, a knife with a blade of 20 cm that was used by the Accused in the attack was recovered at the scene. Its tip was found to be bent and the Accused's DNA was found on the knife.¹⁷¹

The Accused's statements to the police

63 During the course of investigations, the Accused gave a total of five statements to the police.

¹⁶⁶ NE Day 2, p 8, lines 3-12.

¹⁶⁷ NE Day 2, p 7, lines 9-14.

¹⁶⁸ NE Day 2, p 7, lines 15-32.

¹⁶⁹ NE Day 12, pp 44-45.

¹⁷⁰ NE Day 12, p 45, lines 18-24.

¹⁷¹ Prosecution's Closing Submissions at para 23.

(1) The 1st Statement

64 The 1st statement given by the Accused was a long statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) on 20 December 2013 at 10.00 am (“the 1st Statement”) by Sergeant Sanwan Nor bin Hamzah (“SGT Sanwan”).¹⁷²

65 Prior to the recording of the statement, a warning was administered to the Accused by SGT Sanwan: “I am conducting a Police investigation into an offence of s 326 [of the PC] committed on 20/12/2013 at [the void deck of the Block]...”

66 In this statement, the Accused admitted that he had, about 20 minutes before the police arrived, taken a knife and “stab on my wife”. Further, the Accused stated that “I want to kill her and kill me. I stab my wife because she cheating on me. She cheat me many times. I am upset and angry.”¹⁷³

67 In Court, the Accused testified that when he gave this 1st Statement, he was in a state of shock and confusion and he did not want to live.¹⁷⁴

(2) The 2nd Statement

68 The 2nd statement given by the Accused was a long statement recorded under s 22 of the CPC on 20 December 2013 at 9.25 pm (“the 2nd Statement”), again by SGT Sanwan.¹⁷⁵ The Accused did not dispute that a Tamil interpreter was present at the interview.¹⁷⁶

¹⁷² AB543.

¹⁷³ AB543.

¹⁷⁴ NE Day 9, p 41, lines 4-16; NE Day 12, p 46, lines 1-2.

¹⁷⁵ AB543A-543C.

69 This statement recorded first an open-ended recount by the Accused of the events from 19 to 20 December 2013. Briefly, amongst other things, the Accused recounted the following:

(a) On 19 December 2013, the Accused went to the Victim's unit at around 11.00 am as he wanted to ask some questions about "what is the reason she is cheating on me". When he reached the unit, the Victim called K, whom the Accused did not know but thought must be her new boyfriend. The Accused then spoke to the Victim's father and told him that the Victim's behaviour was not good and often changed boyfriends. K then appeared and accompanied the Accused down to the void deck of the Block, after which police officers arrived and advised the Accused to leave. Thereafter, the Accused consumed more alcohol and went back to his residence to sleep.

(b) At around 7.00 pm on 19 December 2013, the Accused woke up and consumed alcohol, he then went to the kitchen and took a vegetable knife and put it inside the socks on his right leg. He then left his residence and bought and consumed more alcohol. The Accused then left for the Victim's unit, intending to "cut my hand in front [*sic*] of her so that she can change and realise how much I love her." When he reached the Block at about 8 or 9 pm, he bought and consumed more alcohol. He later fell asleep at a nearby open air carpark.

(c) The next morning at or about 5.00 am on 20 December 2013, the Accused woke up, drank more alcohol, made his way to the Block, and fell asleep at the void deck about 250 metres away from the lift of the Block.

¹⁷⁶ NE Day 12, p 46, lines 5-10.

(d) At about 8.30 am in the morning, the Accused woke up and suddenly saw the Victim coming out of the lift walking towards him. He got up, ran to her, and held her hand, asking her why she had cheated him. He then said:

3. ... Both of us then had an argument with each other. I then became angry and lost my control. I then took the knife from my right side leg socks and started to slash her but I don't know which area. She then fall on the floor and then get up again and said to me that she love me and will marry me but my parents won't allow. She then kissed me on my lips and I saw a lot of blood coming out from her face. After that she collapsed on the floor. I then realised many blood flowing from the back of her hand. I then started to cry. I started looking for my knife as I wanted to kill myself, however, when I saw the knife, my knife's top blade is already bended. I then tried to make it straight however, the [Victim's] father came and push or kick me, I cannot remember...

4. I admit using a knife and slashed [the Victim]. I did that because I was very sad and angry that she had cheated on me with some other guys, I really love her so much but she cheated on me. For me she is my life, and I want to marry her but unfortunately she cheated on me. At that point of time, I lost my control and I had hurt her.

(e) After a brief struggle between the Accused and the Victim's father, the Accused managed to free himself. He saw the Victim's handphone on the floor, took it, and ran across the road. He intended to go to a police station and he "took [the Victim's] handphone as [he] wanted to show the police for the evidence that she is cheating me with another guy."

70 The statement then recorded three questions and the Accused's responses to each question. The first set of question and answer is of particular significance:

Question 1: Did you have the intention to kill her?

Answer 1: Yes I want to kill her and after that I will kill myself, because she cheat me and at the same time, she is my life and I can't erase her from my heart.

71 In Court, the Accused appeared to take the position that, even though the 2nd Statement recorded accurately what he had in fact told the recording officer, the contents of the 2nd Statement were not true.¹⁷⁷ In particular, in relation to the sentence “I want to kill her and after that I will kill myself, because she cheat me...”, he testified that he had only stated this because the recording officer had told him that he had said so in the morning (*ie*, in the 1st Statement), and since he was surprised and confused and did not wish to live anymore, he just continued with the same account.¹⁷⁸ As for the sentence “at the same time, she is my life and I can't erase her from my heart”, the Accused maintained that it was both accurately recorded and true.¹⁷⁹

(3) The 3rd Statement

72 The 3rd statement was a cautioned statement recorded under s 23 of the CPC on 21 December 2013 at 00.40 am (“the 3rd Statement”) by SGT Sanwan.¹⁸⁰ The charge read to the Accused prior to the recording of the statement was for voluntarily causing grievous hurt by dangerous weapon or means to the Victim under s 326 of the PC. The Accused did not dispute that a Tamil interpreter was present during the statement recording.¹⁸¹

¹⁷⁷ NE Day 12, pp 46-47.

¹⁷⁸ NE Day 12, pp 48-49.

¹⁷⁹ NE Day 12, p 50.

¹⁸⁰ AB543D-H.

¹⁸¹ NE Day 12, p 51, lines 20-26.

73 The Accused stated in this statement:

Forgive me, Sir. Because she cheat me sir, she play with my feelings, sir. I know sir, I am a human, now I realise that I am very guilty and I pray to god that my girlfriend will recover soon. I plead for lighter sentence. But still in my heart, my girlfriend is the only one. Nobody can replace the place because she is my heartbeat. I am extremely very very sorry, sir. Forgive me please, sir.

(4) The 4th Statement

74 The 4th statement was a further statement recorded on 26 December 2013 at 11.15 am (“the 4th Statement”) by SGT Sanwan. A Tamil interpreter was also present.¹⁸²

75 In this statement, the Accused recounted his relationship with the Victim. He stated that they started as friends until “some occasions” where the Victim kissed him. After a period of exchanging messages, the Victim proposed to marry the Accused and told him that she loved him.

76 The Accused explained that the first time he realised that the Victim was cheating on him was when he knew from C that the Victim had sent him the same messages as she sent to him. Apparently, the Victim had told the Accused that even though C was wooing her, she ignored him and instead loved the Accused. When the Accused realised that the Victim was cheating on him, he “became very upset and also angry”.¹⁸³ Subsequently, he and the Victim met up, and he decided to give her “another chance... to change her ways.” The Victim also told the Accused that she loved him and wanted to marry him.

¹⁸² AB543I-K.

¹⁸³ AB543J.

77 In particular, the fourth question and answer are of some significance:

4 Question: In the statement taken on 20/12/2013, you mentioned that you had the intention to kill [the Victim] and then kill yourself. Can you tell me when do [sic] you have the intention to kill [the Victim]?

Answer: I only have the intention to kill her on that day itself when I hold her hand and when I took her handphone and I saw her picture and another Indian Singaporean person on her wallpaper. I think I saw that same person before on 19/12/2013 when I came to [the Victim's] house to talk to her when the guy came and bring me down to the void deck. When I saw that picture, I lose my mind and I become angry. I believed that she is cheating on me. My first intention is to go and find her and to kill myself but after I see the picture on her handphone, I then want to kill her and after that kill myself.

78 During the first tranche of the trial, the Accused's initial evidence was that he did not tell the recording officer the first sentence of his answer to question 4.¹⁸⁴ However, later during the second tranche of the trial, while under cross-examination, the Accused conceded that his answer to question 4 of the 4th Statement was accurately recorded by the recording officer,¹⁸⁵ but he could not confirm if it was true. When asked whether it was correct that he had formed the intention to kill the Victim after he saw the Victim's wallpaper, the Accused responded: "Maybe after seeing the photo [on the Victim's handphone which was used as her wallpaper], I had formed the intention to kill [the Victim] but I cannot confirm that."¹⁸⁶

79 The Accused accepted that the first time he told the police about the photo used as the Victim's wallpaper was on 26 December 2013, six days after the incident, but disagreed that this fact was only an afterthought.¹⁸⁷

¹⁸⁴ NE Day 9, pp 30-31.

¹⁸⁵ NE Day 12, p 52, lines 22-24.

¹⁸⁶ NE Day 12, p 52, lines 25-32; NE Day 12, p53, lines 1-2.

(5) The 5th Statement

80 The 5th statement was a cautioned statement recorded on 9 February 2015 under s 23 of the CPC in relation to the Charge (“the 5th Statement”) by Inspector Rahime Abdullah. A Tamil interpreter was present.

81 The 5th Statement recorded the Accused as stating:

I did not have the intention to kill my girlfriend at all. I myself attempted suicide and I realised that attempting suicide is a wrong decision I have taken. From now on I am living for my parents. I want my girlfriend to be happy. I apologised to my parents, girlfriend for hurting her. I also apologised to the Judge. I also seek forgiveness from God. I feel ashamed for what had happened. I did not want her to die. I lead her be happy and I pray for her well-being. I pray that she will have a good life. Please ask the Judge to give me a lighter sentence.

82 Apart from the 5th Statement which was adduced by the Defence, the other four statements were all adduced by the Prosecution.

The Victim’s injuries

83 The Victim was conveyed by ambulance to the National University Hospital (“NUH”) on 20 December 2013. According to a medical report prepared by Dr Tang Siau Wei of NUH dated 12 March 2014 (“NUH Medical Report”),¹⁸⁸ the Victim was initially given treatment by the Emergency Department of NUH. There, the Victim was found to have wounds on several areas of her body, including the head and neck, chest and abdomen, left and right upper limbs, and right lower limb areas. In view of her “multiple facial and neck lacerations”, the doctors decided to intubate the Victim to protect her

¹⁸⁷ NE Day 12, p 52, lines 3-25; Defence’s Closing Submissions at paras 8.3-8.5

¹⁸⁸ AB507-509.

airway. The Victim was also brought to the operating theatre for washout and debridement and closure of the wounds on the same day.¹⁸⁹

84 The NUH Medical Report also recorded several intraoperative findings, which may be summarised as follows:

- (a) penetrating facial and neck wounds with left ear, left parotid gland and left facial nerve transaction;
- (b) multiple shoulder and back wounds with left L2/3 paraspinal penetrating injury;
- (c) left hand wounds with thumb cut tendon; and
- (d) bilateral upper abdominal wounds.

85 The Victim's injuries were managed by four specialist teams at NUH: (a) the hand surgery department, (b) the ear, nose and throat department, (c) the plastic surgery department, and (d) the orthopaedics and spine surgery department.

86 The details of these injuries and the treatment offered will be discussed later where relevant or appropriate.

87 The Victim was given 19 days of hospitalisation leave from 20 December 2013 to 7 January 2014, which was further extended during her clinic visit on 2 January 2014 to 3 February 2014.¹⁹⁰

¹⁸⁹ AB508.

¹⁹⁰ AB 509.

The Accused's mental state

88 The Accused's mental state at the time of the offence was an issue in dispute before me. The Prosecution called Dr Stephen Phang ("Dr Phang") who was a senior consultant psychiatrist attached to the department of general and forensic psychiatry at the Institute of Mental Health. The Defence called Dr Jacob Rajesh ("Dr Rajesh"), who was acting in his capacity as a consultant psychiatrist at Promises Pte Ltd, a private psychiatric clinic.

89 Dr Phang produced two written reports in respect of the Accused's mental state and was called to explain them as Prosecution's witness during the Prosecution's case. Dr Rajesh produced one written report but, when called during the Defence's case, orally provided a further report which materially differed from his first written report. Thus, after Dr Rajesh gave his evidence, the Prosecution applied to recall Dr Phang as a rebuttal witness in respect of certain issues raised by Dr Rajesh. I granted the application for reasons to be elaborated on below (at [112] to [123]). The evidence provided by the two experts will also be detailed below at the suitable juncture (at [153] to [266]).

The Prosecution's case

90 In relation to the *mens rea* of the offence, the Prosecution's case was that the Accused had the capacity to form intention, and in fact had the requisite intention to kill the Victim under s 307(1) of the PC, at the material time of the alleged offence.

91 The *actus reus* of the offence (*ie*, the fact that the Accused had stabbed the Victim and caused the injuries stated in the Charge) was not disputed. The Prosecution noted that the Accused had used "considerable force" when

wielding the knife, so much so that at one point, when the Accused hit the floor with the knife blade, it caused the tip of the blade to bend.¹⁹¹

92 If not for the intervention of the Victim's father, the Accused would have continued to stab and slash the Victim.¹⁹² Further, if not for the timely receipt of medical attention, the Victim could have died from her injuries.¹⁹³

93 The Prosecution's case theory was that the Accused continued to love the Victim through to 20 December 2013 despite the issues that had arisen in the course of their relationship.¹⁹⁴ However, because the Victim had cheated the Accused financially and romantically, the Accused harboured simmering anger and resentment against the Victim since June 2013.¹⁹⁵ On 19 December 2013, it became clear that the Victim did not want anything to have to do with the Accused.¹⁹⁶ The Accused was not prepared to accept this, and therefore attacked the Victim at the void deck of the Block on the morning of 20 December 2013 with the requisite intention to kill the Victim.¹⁹⁷

94 In the circumstances, the offence was fundamentally the product of the Accused's anger at being rebuffed and rejected by the Victim and her family.¹⁹⁸ At the material time, the Accused did not suffer from any major psychiatric

¹⁹¹ NE Day 12, p 42, lines 24-28.

¹⁹² NE Day 12, p 43, lines 3-4.

¹⁹³ NE Day 12, p 42, lines 8-10.

¹⁹⁴ NE Day 12, p 54, lines 22-28.

¹⁹⁵ Prosecution's Closing Submissions at paras 60, 64, 70.

¹⁹⁶ NE Day 12, p 54, lines 30-32.

¹⁹⁷ Prosecution's Closing Submissions at para 5.

¹⁹⁸ NE Day 15, p 38.

condition which would deprive him of the capacity to form the intention to kill the Victim.

95 Further, even if the Accused had intended to kill himself *and* the Victim, he would still have had the requisite intention to kill the Victim since there was no way for him to end their lives together without first carrying out his stated intention to kill her.¹⁹⁹

96 Evidentially, the Prosecution relied on the following for their case:

(a) The Accused's purported admission to having the intention to kill the Victim to (a) a witness, Hanif, and (b) police officers, SI Irwan and SSGT Kairul.²⁰⁰

(b) The Accused's various statements which, according to the Prosecution, were accurately recorded and taken when the Accused had the requisite presence of mind.²⁰¹ These statements were also not affected by the fact that they referred to a charge under s 326 of the PC rather than under s 307 of the PC.²⁰²

(c) The Victim's injuries and the manner of the Accused's attack.²⁰³

(d) Dr Phang's expert evidence that the Accused had the capacity to form intent and was not labouring under a major psychiatric condition

¹⁹⁹ Prosecution's Closing Submissions at para 73.

²⁰⁰ Prosecution's Closing Submissions at paras 74-76.

²⁰¹ Prosecution's Closing Submissions at paras 77-95.

²⁰² Prosecution's Closing Submissions at paras 96-99.

²⁰³ Prosecution's Closing Submissions at paras 100-108.

at the material time of the alleged offence, which the Prosecution argued should be preferred over the evidence of Dr Rajesh.²⁰⁴

97 The Prosecution further submitted that the Accused's own testimony was illogical and fraught with inconsistencies.²⁰⁵

98 Finally, in relation to the partial defence of provocation, the Prosecution submitted that neither the objective nor the subjective components of the defence was satisfied. The Accused possessed clarity of thought and awareness when he attacked the Victim, and the wallpaper which the Accused saw on the Victim's handphone could not constitute objectively "grave and sudden" provocation.²⁰⁶

The Defence's case

99 The Defence's primary case was that the Prosecution had failed to prove its case *vis-à-vis* the Accused's requisite intention to kill the Victim at the material time of the alleged offence.²⁰⁷ Rather, at all material times through to the commission of the alleged offence, "what was upper most in [the Accused's] mind was to commit suicide in the presence of his lover".²⁰⁸ This was evidenced by the fact that the Accused had declared his intention to commit suicide "no less than three times" from 19 to 20 December 2013.²⁰⁹

²⁰⁴ Prosecution's Closing Submissions at paras 126-162.

²⁰⁵ Prosecution's Closing Submissions at paras 109-125.

²⁰⁶ Prosecution's Closing Submissions at paras 163-176.

²⁰⁷ Defence's Closing Submissions at para 12.1, p 37 (Conclusion).

²⁰⁸ Defence's Closing Submissions at para 7.4.

²⁰⁹ Defence's Closing Submissions at para 7.1.

(a) On 19 December 2013, in response to K's statement to the Accused that "Do you think [the Victim] is your wife? She is my wife and also my brother's wife", the Accused shouted at the Victim: "Must I listen to all this rubbish? I might as well kill myself".

(b) When he called his mother in India on 19 December 2013 to inform her that this would be his last call and that he would not be seeing her again.

(c) Just before the alleged offence, when he told the Victim that he wanted to kill himself.

100 The Defence further submitted that even if the Accused's intention could have changed after having sight of the Victim's wallpaper on her handphone on 20 December 2013, the Accused did not have capacity to form intention at the material time of the alleged offence.²¹⁰ In this regard, the Defence relied on the expert opinion of Dr Rajesh,²¹¹ and submitted that Dr Phang's evidence should be treated with caution because he was inconsistent and biased.²¹² According to the Defence, the Accused only came to his senses when the Victim tugged at the Accused's shirt.²¹³

101 The Defence cited the landmark decision of *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR 453 to urge the Court to take into account the multiple injuries of the Victim to support its submission that the Accused did not have the mental capacity to intend to kill the Victim. That case

²¹⁰ Defence's Closing Submissions at para 11.2.

²¹¹ Defence's Closing Submissions at para 12.

²¹² Defence's Closing Submissions at paras 12.6, 12.10, 14.5.

²¹³ NE Day 4, pp 38-39.

was not cited by the Defence for the partial defence of provocation, but I will consider that defence later in any event.²¹⁴

Preliminary issues

102 Before turning to the Charge proper, I shall first set out my reasons in relation to two procedural applications made in the course of the trial.

Gag order on identity of the Victim

103 At the commencement of the trial, the Prosecution applied for a gag order on the identity of the Victim under s 8(3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”).

104 Section 8(3) of the SCJA provides as follows:

(3) A court may at any time order that no person shall —

(a) publish the name, address or photograph of any witness in any matter or proceeding or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; or

(b) do any other act which is likely to lead to the identification of such a witness.

105 The Prosecution submitted that a gag order is necessary in this case to facilitate candid testimony by the Victim and to uphold the pursuit of justice. The present case is not one involving minors or sexual offences such that other provisions concerning the prohibition of publication of the victim’s details do not apply (see, eg, s 35 of the Children and Young Person’s Act and s 153(4) of the Women’s Charter). However, s 8(3) of the SCJA provides a residual power to the Court to grant a gag order where it considers appropriate. The Prosecution

²¹⁴ Defence’s Closing Submissions at paras 13.4-13.5.

cited *Public Prosecutor v Lydiawaty binte Abdul Rahman* (MAC-906236-2014) (“*Lydiawaty*”) as an example of a case where a gag order was granted in a case of violent nature even though minors and sexual offences were not involved. In the present case, the Prosecution submitted that given the Victim’s fragile emotional state and the intensive media attention that the case had received, she should be spared from further trauma arising from media scrutiny into her personal life. From a broader perspective, it is also in the interests of justice that victims be unafraid to testify in Court against any kind of offence.²¹⁵

106 The Defence sought to distinguish *Lydiawaty* on the basis that that was a case concerning two females in a relationship. Counsel argued that there would be nothing to hide if one was telling the truth. Further, it was submitted that the Court should be cautious in setting a precedent for allowing gag orders in cases that do not involve minors and are not of a sexual nature.²¹⁶

107 I granted the Prosecution’s application.

108 First, even without relying on *Lydiawaty*, the fact that there is a residual discretion under s 8(3) of the SCJA to grant a gag order suggests that Parliament envisaged situations, beyond cases involving minors and sexual offences, which may warrant a restriction on the publication of a witness’s (including a victim’s) identification particulars.

109 Secondly, while there are virtues to upholding open justice, such as transparency, it was not necessary in this case to have public disclosure of the Victim’s identity. The identity and particulars of the Victim were not of such

²¹⁵ NE Day 1, pp 6-7, 9.

²¹⁶ NE Day 1, p 8.

importance to the case that it would adversely affect the public's understanding or appreciation of this case if the Victim remained unidentified.

110 Thirdly, insofar as the Defence suggested that granting the gag order would open the floodgates for the Prosecution to seek gag orders in “every other matter”,²¹⁷ the concerns are likely to have been misplaced. The Courts will have ultimate control over the conduct of proceedings, and will need to be persuaded on the balance of interests. In the present case, it was not disputed that the existence and extent of an allegedly intimate relationship between the Accused and the Victim were issues that were going to be contested during the trial. Therefore, balancing the non-apparent benefit that could be derived from the identification of the Victim, against the distress that may be revisited upon the Victim given the probable intense scrutiny of her past decisions by the media and the public, and against the possible deterrence of other victims in similar situations from reporting offences and testifying against other accused persons, I was of the view that a gag order would be appropriate in this case. In my view, even though this case did not strictly speaking involve a sexual offence, it invoked similar concerns.

111 Fourthly, the Defence did not suggest that the gag order would in any way prejudice the Accused.

Rebuttal witnesses

112 Dr Rajesh was the last witness called by the Defence. At the close of the Defence's case, the Prosecution applied to recall Dr Phang as a rebuttal witness in respect of (a) Dr Rajesh's diagnosis that the Accused suffered from acute stress disorder at the material time of the alleged offence, and (b) Dr Rajesh's

²¹⁷ NE Day 1, p 8, lines 20-27.

opinion that, due to the acute stress disorder, the Accused lacked the capacity to form intention at that time. Apparently, both these points only became known to the Prosecution when Dr Rajesh gave evidence on the stand.

113 In this regard, the Prosecution relied on s 230(1)(t) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), which stated as follows:

Procedure at trial

230.—(1) The following procedure must be complied with at the trial in all courts:

(a) [...]

[...]

(t) at the close of the defence case, the prosecution shall have the right to call a person as a witness or recall and re-examine a person already examined, for the purpose of rebuttal, and such witness may be cross-examined by the accused and every co-accused, after which the prosecutor may re-examine him;

[...]

114 In addition, the Prosecution also cited *Zainal Bin Kuning v Chan Sin Mian Michael* [1996] 2 SLR(R) 858 (“*Zainal*”) for the proposition that the plaintiff would be allowed to call rebuttal evidence against the defence if the plaintiff was misled or taken by surprise (at [38]):

38 It is true that a discretion lies with the trial judge to allow the plaintiff to call evidence to rebut evidence of the defence: *Williams v Davies* (1833) 1 Cr & M 464; 149 ER 481. This is so even where the defence was disclosed in the cross-examination of the plaintiff and his witnesses: *Shaw v Beck* (1853) 8 Exch 392. Generally, leave will be granted where the party has been misled or taken by surprise: *Bigsby v Dickinson* (1876) 4 Ch D 24. The same principles were enunciated in *Alrich Development Pte Ltd v Rafiq Jumabhoy* [1994] 3 SLR(R) 38. There, Chao Hick Tin J said, at [154]:

It seems to me settled law that evidence in rebuttal should only be permitted to a plaintiff (a) if a matter or

development has quite unexpectedly arisen during trial which the plaintiff could not reasonably anticipate; or (b) in answer to evidence of the defendant in support of an issue, the proof of which lays upon the defendant: see *Supreme Court Practice* vol 1, para 38/1/7. Evidence in rebuttal is not allowed to merely confirm the plaintiffs' case: see *Jacobs v Tarleton* (1848) 11 QB 421.

115 According to the Prosecution, the approach in *Zainal* applied to criminal trials on the authority of *Public Prosecutor v Bridges Christopher* [1997] 3 SLR(R) 467 (“*Bridges Christopher*”) (at [59]):

... it is evident that the generally accepted rule in England in criminal cases is the rule stated by the Court of Appeal in *Zainal bin Kuning* and there is no reason why that rule should not also apply to summary criminal trials in our jurisdiction.

116 The Defence opposed the Prosecution’s application and made two main arguments. First, it was the Court’s discretion to determine the necessity of the rebuttal evidence. In this case, the Defence maintained that they had not raised anything which surprised the Prosecution. Dr Rajesh’s evidence concerning acute stress disorder/reaction was merely an agreement with Dr Phang’s diagnosis of acute stress reaction. Secondly, the Defence submitted that s 230(1)(t) of the CPC was designed to deal with the adduction of rebuttal evidence to prove or disprove factual evidence and not expert evidence.²¹⁸

117 I granted the Prosecution’s application. Based on the language of s 230(1)(t) of the CPC, it appeared that the Prosecution had a *right* to call a rebuttal witness at the close of the Defence’s case. If this “right” was read in the absolute sense of the word, it would suggest that the Prosecution was entitled to call Dr Phang as a rebuttal witness, regardless of the Defence’s objections, and whether or not the Court may have agreed.

²¹⁸ NE Day 15, pp 44-45.

118 However, it was not clear whether the “right” to call a rebuttal witness under s 230(1)(t) of the CPC was subject to the overriding discretion of the Court. It has been said that “[a]s [s 230(1)(t)] does no more than statutorily enshrine the prevailing practice hitherto, the *corpus* of jurisprudence that has developed thus far would apply” (Jennifer Marie and Mohamed Faizal, *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Academy Publishing, 2012) at para 12.060). In this regard, case law prior to the 2012 edition of the CPC suggested that the Court had an overriding discretion as to whether to grant an application to call a rebuttal witness (see, eg, *Azman bin Jamaludin v Public Prosecutor* [2012] 1 SLR 615; *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855; *Arts Niche Cyber Distribution Pte Ltd v Public Prosecutor* [1999] 2 SLR(R) 936).

119 Section 283(1) of the CPC appears to affirm the Court’s discretion whether to allow a party to recall a witness at the end of the Defence’s case. For context, s 283 of the CPC states as follows:

Power of court to summon and examine persons

283.—(1) A court may, on its own motion or on the application of the prosecution or the defence, at the close of the case for the defence, or at the end of any proceeding under this Code, summon a person as a witness or examine a person in attendance as a witness, whether or not summoned, or recall and re-examine a person already examined.

(2) The court must summon and examine or recall and re-examine such a person if it thinks his evidence is essential to making a just decision in the case.

(3) The exercise by a court of its power under subsection (1) is not a ground for appeal, or for revision, unless the appellant, or the applicant, as the case may be, shows that the examination has led to a failure of justice.

As the interaction between s 230(1)(t) and s 283 of the CPC was not an issue before me, I say no more.

120 In any event, for the purposes of the present case, both the Prosecution and the Defence appeared to agree that the Court had a discretion as to whether or not to allow the Prosecution's application to call a rebuttal witness. In particular, the Prosecution did not assert an unfettered right to call Dr Phang as a rebuttal witness.

121 Therefore, even if the Court had an overriding discretion as to whether to grant the Prosecution's application to recall a rebuttal witness, I was of the view that the Prosecution's application in this case should be allowed. In my view, Dr Rajesh's testimony in Court regarding acute stress disorder/reaction and the consequential lack of capacity to form intention on the part of the Accused was not adequately foreshadowed by Dr Rajesh's 1st Report or any other evidence, and the Prosecution could not have reasonably anticipated such evidence being given by Dr Rajesh. I accepted that the Prosecution was in fact taken by surprise (see *Zainal* at [38] quoted above at [114]; *Bridges Christopher* at [51]).

122 For the above reasons, I allowed the Prosecution's application at the close of the Defence's case to recall Dr Phang as a rebuttal witness.

123 At the end of Dr Phang's rebuttal testimony, the Defence initially sought to call Dr Rajesh in surrebuttal. This application was not eventually pursued by the Defence.²¹⁹

Law on attempted murder

124 Section 307 of the PC provides for the offence of attempted murder:

Attempt to murder

²¹⁹ NE Day 15, p 74, lines 1-3.

307.—(1) Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to imprisonment for a term which may extend to 20 years, and shall also be liable to caning or fine or both.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with intention of causing the death of a child of tender years, throws the child into a river. A has committed the offence defined by this section, although the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

125 It appears that there has not been a local decision substantively discussing the elements of the offence of attempted murder under s 307 of the PC. The Defence elected not to contend with the law, and instead focussed its closing submissions on the facts of the present case. The Prosecution made brief submissions on the proper construction of s 307 in their closing submissions based on academic commentary and foreign case law.

Mens rea

126 The requisite *mens rea* under s 307 of the PC is encapsulated by the phrase “such intention or knowledge... that... he would be guilty of murder”. This phrase ties the *mens rea* of attempted murder under s 307 of the PC to the *mens rea* of the offence of murder under s 300 of the PC. Therefore, for both s 307 (attempted murder) and s 300 (murder) of the PC, there are four alternative limbs of *mens rea*, which may be summarised as follows:

- (a) intention to cause death (s 300(a));
- (b) intention to cause such bodily injury as the accused knows to be likely to cause the death of the person to whom the harm is caused (s 300(b));
- (c) intention to cause bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death (s 300(c));
- (d) knowledge that his act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death (s 300(d)).

127 The Prosecution’s primary case was that the Accused had, at the material time, an intention to kill the Victim (which I take to be synonymous with an intention to cause her death). However, the Prosecution also cited the alternative *mens rea* limbs of ss 300(b) and (d) in their closing submissions.²²⁰ Insofar as these alternative limbs are concerned, two observations are due.

²²⁰ Prosecution’s Closing Submissions at para 108.

128 First, based on this four-limbed approach which equates *mens rea* under s 307 of the PC to that under s 300 of the PC, an intention to cause death (or, which I take as synonymous, an intention to kill) is only one of four alternative limbs of *mens rea* that would satisfy s 307. While there may be Indian cases suggesting that an intention to kill is the *only* limb of *mens rea* that could satisfy s 307 of the PC (see Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2nd Ed, 2012) (“YMC”) at para 36.36), I am doubtful if that reading of s 307 can be accommodated by the language of the provision. In any event, as will be explained, it is not necessary to rely on the alternative limbs of *mens rea* in the present case.

129 Secondly, the four-limbed approach to *mens rea* under s 307 of the PC may result in inconsistency with the *mens rea* requirement under the general attempt provision of s 511 of the PC. This is because, unlike the four limbs of *mens rea* for s 307, s 511 of the PC generally requires an intention to commit the substantive offence with which s 511 is read (see *Mas Swan bin Adnan v Public Prosecutor* [2012] 3 SLR 527 (“*Mas Swan*”) at [33]). This, however, is not an insurmountable difficulty. As the High Court observed in *Public Prosecutor v Ketmuang Banphanuk and another* [1995] SGHC 46 (“*Ketmuang*”), “[f]or offences where the legislative provides for specific definitions of attempt [such as s 307 of the PC], the general definition [under s 511 of the PC] will not apply”. This observation by the High Court was left undisturbed on appeal.

Actus reus

130 The requisite *actus reus* under s 307 of the PC is captured by the phrase “does any act... under such circumstances that if he by that act caused death he would be guilty of murder”.

131 There may be some difficulty in delineating the extent to which the accused must have embarked on the crime in order for criminal liability under s 307 of the PC to be imposed. Generally, there are at least five possible approaches to the *actus reus* of attempted offences (*YMC* at paras 36.17–36.22):

- (a) **Proximity test:** The accused must have done some overt act which is directed towards the actual commission of the crime and which is immediately and not remotely connected with the crime.
- (b) **Last act test:** The accused must have done all the acts which he believed to be necessary to commit the substantive offence.
- (c) **Apparent intention test:** The accused must have conducted himself in a manner which indicates in itself a clear and unequivocal intention to commit the offence.
- (d) **Substantial step test:** The accused must have progressed a substantial way towards the completion of the offence.
- (e) **Embarked on the crime proper test:** The offender must have “embarked on the crime proper”.

132 In this regard, it should be noted that there are several provisions under the PC for attempt-related offences. Insofar as s 307 of the PC provides for the offence of attempted murder (and s 308 of the PC provides for attempted culpable homicide), these are *specific* provisions for the *attempt of particular offences*, whereas the *general* attempt provision is s 511 of the PC.

133 In its closing submissions, the Prosecution appears to suggest that the apparent intention test should apply. Citing a leading Indian text, the Prosecution submitted, under a section titled “*actus reus*”, that “the focus would nevertheless return back to the intention or knowledge motivating such an act, which could be inferred from the circumstances” (see C K Thakker & M C Thakker eds, *Ratanlal & Dhirajlal’s Law of Crimes, A Commentary on the Indian Penal Code, 1860, Volume Two* (26th ed, Bharat Law House, 2010) (“*Ratanlal*”) at p 1804).²²¹ Insofar as the apparent intention test is concerned, the leading local text states that the question is whether a person observing the conduct of the accused in video form without sound must decide that the accused was attempting to commit the offence charged; evidence that cannot be considered within this rubric, such as confessions and statements, is irrelevant (*YMC* at para 36.20). The Defence made no submissions on this issue of the requisite *actus reus* under s 307 of the PC.

134 On the other hand, the illustrations to s 307 of the PC suggest that the “last act” test applies.

135 It is not necessary for me to reach a conclusive view on the appropriate *actus reus* test to be adopted in relation to s 307. As will be explained, the facts of the present case do not turn on the adoption of any one of the five possible approaches listed above: each of them would be satisfied in any event.

The decision

136 I turn now to the facts and set out four substantive issues which I will examine in turn:

²²¹ Prosecution’s Closing Submissions at para 52.

- (a) Did the Accused have the capacity to form intent at the material time of the alleged offence;
- (b) Did the Accused in fact have the requisite *mens rea* under s 307 of the PC at that material time;
- (c) Did the Accused, by his conduct at the material time of the alleged offence, in fact satisfy the requisite *actus reus* under s 307 of the PC; and
- (d) Whether and how the partial defence of grave and sudden provocation applies in relation to charges under s 307 of the PC, and whether it is made out on the facts.

Three preliminary questions and the burden of proof

137 A central issue of contention between the Prosecution and the Defence was whether the Accused possessed the capacity to form an intention to kill the Victim at the material time after he purportedly saw the Victim's wallpaper on her handphone on the morning of 20 December 2013 (see [49] above). This issue begs three premises of fact and expert opinion, which I briefly discuss before delving into the four substantive issues set out above:

- (a) whether there was in fact a wallpaper on the Victim's handphone at the material time that depicted the Victim in an embrace with K;
- (b) whether the Accused in fact saw the Victim's wallpaper at the material time; and
- (c) what impact, if any, did the wallpaper have on the Accused's state of mind when the Accused beheld it at the material time.

138 The first question relates to the existence of the wallpaper as alleged by the Accused. This forms the premise of the entire analysis on the Accused's *mens rea* at the material time and the satisfaction of the partial defence of provocation.

139 There was some subjective evidence before the Court as to the existence and depiction of the said wallpaper. The Accused testified under cross-examination that, immediately prior to the commission of the alleged offence, he had seen a wallpaper on the Victim's handphone which was a photo of the Victim with K, where K's left arm was around the Victim's shoulder, as if they were hugging while facing each other.²²² The Victim mentioned under cross-examination, in response to the question "...there was a wallpaper, [SH] embracing you", that she did not "remember the wallpaper".²²³ Even then, it was not clear if she meant that she did not recall the existence of the wallpaper, the identities of the persons in an embrace, or whether the wallpaper depicted an embrace at all.

140 Regrettably, for reasons unknown to the Court, despite the importance of the wallpaper to this case, neither party adduced objective evidence as to whether the wallpaper in fact existed on the Victim's handphone at the material time and what the wallpaper depicted even if it did. The obvious thing that could have been done was to adduce a picture or screenshot of the wallpaper in question, but neither party did so.

141 It would have been preferable for the wallpaper itself to have been adduced. That would assist the Court to ascertain for itself, among other things,

²²² NE Day 12, pp 37-38.

²²³ NE Day 6, p 57, line 18.

whether the wallpaper existed as alleged and what it depicted. It would also allow the Court to determine whether the wallpaper could have been seen by a third party physically standing in the Accused's position in relation to the Victim's handphone, and how it could have affected the Accused if and when he saw the wallpaper.

142 The Defence submitted that the Prosecution should have “verified” or “addressed” the question of whether the wallpaper in fact existed, given “all the technology out there” and the fact that the police allegedly had custody of the Victim's handphone.²²⁴ The Defence went so far as to assert that there had been a “failure on the part of the [P]rosecution to carry out a fair investigation”.²²⁵ For this reason, the Defence urged the Court to infer that the Prosecution's argument that the “issue of wallpaper was [a]n afterthought” is devoid of merit.²²⁶

143 At this point, some discussion about the Prosecution's and the Defence's respective burdens of proof is apposite.

²²⁴ Defence's Closing Submissions at para 8.7.

²²⁵ Defence's Closing Submissions at para 8.7.

²²⁶ Defence's Closing Submissions at para 8.7.

144 Although the Prosecution bears the legal burden to prove beyond a reasonable doubt that the Accused had, at the material time, the capacity to form intent, the Defence bears the evidential burden to put the Accused's (in)capacity to form intent at the material time into issue. The distinction between a legal and an evidential burden of proof was explained by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 (*"Britestone"*) (at [58]) as follows:

58 The term 'burden of proof' is more properly used with reference to the obligation to prove. There are in fact two kinds of burden in relation to the adduction of evidence. The first, designated the legal burden of proof, is, properly speaking, a burden of proof, for it describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists. The obligation never shifts in respect of any fact, and only 'shifts' in a manner of loose terminology when a legal presumption operates. The second is a burden of proof only loosely speaking, for it falls short of an obligation to prove that a particular fact exists. It is more accurately designated the evidential burden to produce evidence since, whenever it operates, the failure to adduce some evidence, whether in propounding or rebutting, will mean a failure to engage the question of the existence of a particular fact or to keep this question alive. As such, this burden can and will shift.

145 The concept of an evidential burden of proof is not expressly provided for in the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"), but it nevertheless exists in local jurisprudence "in the form of a tactical onus to contradict, weaken or explain away the evidence that has been led..." (*Coöperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International) v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30]).

146 In the present case, I am of the view that the Defence bears the evidential burden to produce sufficient evidence to engage the issue of the Accused's (in)capacity to form intent at the material time. This entails, more specifically, the production of evidence to engage each of the abovementioned three

premises to the issue (see [137] above), since a failure to engage any of these premises would necessarily and logically mean a failure to engage the issue itself, unless any premise is conceded by the Prosecution. If in the end the Defence fails to pass its evidential burden, it would “mean a failure to engage the question of the existence of a particular fact [of capacity to form intent] or to keep this question alive” (see quotation above of *Britestone* at [58]).

147 I return now to the first premise that the wallpaper existed as described by the Accused. In this regard, the Defence could have passed its evidential burden by adducing the wallpaper itself. It did not do so, electing instead to rely on the Accused’s testimony on the existence and depiction of the wallpaper. The Defence may have been entitled to so elect, but it is a separate question whether or not that was to its strategic advantage. The Defence did not complain that it lacked access to the Victim’s handphone before or during the conduct of the trial. Even if the handphone was in the possession of the police, the Defence could have asked for the wallpaper to be produced or for access to the handphone to produce the wallpaper. At least based on the court’s record, it appears that this had not been done. The Defence also did not assert that the Prosecution had been in breach of any duty of disclosure. Therefore, the Defence’s accusation of unfair investigation by the Prosecution is not justified.

148 Having said that, I am prepared to accept at face value the Accused’s allegation that a wallpaper depicting the Victim and K in an embrace existed on the Victim’s handphone at the material time. In the course of the trial and in its closing submissions, the Prosecution did not challenge the existence of the wallpaper as such and appeared to proceed on the basis that it did exist. Since both the Prosecution and the Defence were prepared to proceed on this basis, I

will assume the same even though it is regrettable that the wallpaper (if it existed) was not eventually adduced.

149 I turn next to the second premise that the Accused had sight of the alleged wallpaper at the material time. Again, I am of the view that the Defence bears the evidential burden to produce sufficient evidence to engage this fact, without which the issue of the Accused's (in)capacity to form intention cannot logically arise. In this regard, the Accused testified that he had caught sight of the wallpaper at around the time the Victim received and cut off a phone call.²²⁷ The Victim stated in her conditioned statement that she was texting on her handphone when she exited the lift of her Block,²²⁸ but she later testified in Court that she had been listening to music at that time.²²⁹ In any event, the Victim's evidence was that she was not aware whether the Accused had at the material time seen the wallpaper or otherwise.²³⁰ Thus, even though there is some subjective evidence to engage this premise, it remains unclear whether the Accused had in fact beheld the wallpaper on the Victim's handphone at the material time. I will say more on this later.

150 In the meantime, I also note that the Victim said in her conditioned statement that "I had also shown the [A]ccused photographs of my boyfriend and I as well".²³¹ This would have been before the date of the alleged offence. The Defence appeared to accept that the Victim had done this,²³² but it was unclear whether the photographs referred to included the wallpaper.

²²⁷ NE Day 12, p 40, lines 4-9; NE Day 6, p 57, lines 2-3.

²²⁸ AB40.

²²⁹ NE Day 6, p 57.

²³⁰ NE Day 6, p 57, lines 21-23.

²³¹ AB41.

151 The third premise is that when the Accused beheld the wallpaper, it affected his mental state and caused him to lose his capacity to form intent. I pause to note that the Defence did not rely on the general defences of unsoundness of mind (under s 84 of the PC) or intoxication (under ss 85 and 86 of the PC) or the partial defence of diminished responsibility (under s 300 of the PC). It is not clear what the Defence meant when it said that the Accused lacked capacity to form intent due to his mental condition but did not suffer from an unsoundness of mind. It seems that the Defence was submitting that although the Accused did not suffer from unsoundness of mind as such, he nevertheless lacked the mental capacity to form an intention to kill the Victim.

Did the Accused have capacity to form intent?

152 The first substantive issue to be decided is whether the Accused had the capacity to form intent at the material time of the alleged offence. This issue is largely a matter requiring the weighing of competing expert testimonies given by Dr Rajesh and Dr Phang *vis-à-vis* the Accused's state of mind at the material time.

The expert evidence

153 I set out first Dr Phang and Dr Rajesh's respective evidence on the issue.

(1) Dr Phang's evidence during the Prosecution's case

154 After his arrest, the Accused was remanded at Changi Prison Complex Medical Centre for psychiatric assessment. He was attended to by Dr Phang, who prepared two reports in respect of the Accused's mental state.

²³² NE Day 6, pp 36-37.

155 The first report is dated 20 February 2014 (hereinafter referred to as Dr Phang’s 1st Report).²³³ This report was prepared following Dr Phang’s examination of the Accused on 29 January 2014 (for 2 hours and 33 minutes),²³⁴ 4 February 2014 (for one hour and 23 minutes),²³⁵ and 5 February 2014 (for one hour and 51 minutes).²³⁶ These examinations were conducted in English.²³⁷ For the first and third examinations, a Tamil interpreter was present.²³⁸ No Tamil interpreter was present for Dr Phang’s second examination on 4 February 2014, but Dr Phang testified that the Accused was “actually quite fluent” in English and could understand him.²³⁹ In any event, Dr Phang stated that he had double-checked all that had been communicated on 4 February 2014 at the next examination, during which a Tamil interpreter was present.²⁴⁰

156 The second report is dated 29 June 2016 (hereinafter referred to as Dr Phang’s 2nd Report).²⁴¹ It was prepared at the request of the then-investigation officer of the case as the Defence had engaged a private psychiatrist to reassess the Accused.²⁴²

157 The set of facts on which Dr Phang based his 1st and 2nd Reports was broadly consistent with that put forth by the Accused himself at trial. At trial,

²³³ Exhibit P65.

²³⁴ NE Day 3, p 109, lines 26-32.

²³⁵ NE Day 3, p 110, lines 16-17.

²³⁶ NE Day 3, p 110, lines 22-24.

²³⁷ NE Day 3, p 111, lines 1-3.

²³⁸ NE Day 3, pp 109-110.

²³⁹ NE Day 3, p 111, lines 10-27.

²⁴⁰ NE Day 3, p 111, lines 21-27.

²⁴¹ Exhibit P66.

²⁴² NE Day 3, pp 104-105.

Dr Phang referred to his case notes for an account of what the Accused communicated to him during the examinations.²⁴³ The salient points included, among other things, the following:

(a) In August 2013, the Victim invited the Accused to her unit. Both the Victim's parents happened to be at home. The Victim's father rebuffed him and commented that he looked like a gardener.²⁴⁴

(b) In September 2013, the Victim doubted the Accused's fidelity. To prove his fidelity, the Accused cut himself on his forearm with a paint scraper before the Victim while at her workplace during working hours.²⁴⁵

(c) In early December 2013, the Accused's housemates counselled him that the Victim was likely cheating him and that he should instead think of his parents in India. He did not heed that advice. Instead, he spent a significant part of his salary and bonus received later that month on jewellery and clothing for the Victim.²⁴⁶

(d) On 19 December 2013, the Accused went to the Victim's unit to tell her that he had bought gifts for her, but was rebuffed again by the Victim's father. Further, K, who was summoned by the Victim,²⁴⁷ said to the Accused "You think she's your wife? She's also a wife to me and to my brother".²⁴⁸ The Accused told Dr Phang that K's remarks made

²⁴³ NE Day 4, p 2, lines 1-18.

²⁴⁴ NE Day 4, p 2, lines 20-27.

²⁴⁵ NE Day 4, p 3, lines 1-20; NE Day 3, p 116, lines 15-22.

²⁴⁶ NE Day 4, p 3, lines 21-30.

²⁴⁷ NE Day 4, pp 3-4.

²⁴⁸ NE day 4, p 6, lines 9-14.

him “extremely upset”²⁴⁹ and added “I shouted at [the Victim] and told her I’m embarrassed by what [K] said. ‘Must I listen to all this rubbish? I might as well kill myself.’ At this juncture, the police arrived at the scene.”²⁵⁰

(e) On the night of 19 December 2013, the Accused drank beer fairly regularly throughout the night before falling asleep in the vicinity of the Block. He recounted specifically the number of cans of beer, the brand of the beer, and the shop from which they had been purchased.²⁵¹

(f) Regarding the incident on 20 December 2013, the Accused said that when he saw the Victim emerge from the lift, the Accused rushed towards her, caught hold of her arm, and instructed her to follow him. At that moment, he saw on the Victim’s handphone a photo of the Victim and K in a posture of intimate embrace and consequentially “lost my head”²⁵² and “lose control of his... emotions”.²⁵³ The Accused maintained that he had no recollection of what transpired in the moments after he spotted the photo. However, it appeared to Dr Phang that he could recount vivid details of the incident, including before and after the stabbing.²⁵⁴ For instance, the Accused could remember that he grabbed the Victim’s hand and asked her to follow him; that a call came through from a friend of the victim’s called “Rubini”, that he beat his own forehead in frustration; that he had noticed the knife that he brought

²⁴⁹ Exhibit P65, para 13.

²⁵⁰ NE Day 4, p 6, lines 16-19.

²⁵¹ NE Day 4, p 22.

²⁵² Exhibit P65, para 15.

²⁵³ NE Day 3, p 113.

²⁵⁴ Exhibit P65, para 16.

along on the floor; that at one juncture he held a knife in his right hand so tightly that he inadvertently injured his own right palm; that the Victim's father appeared at the scene and kicked him to the extent that he fell to the ground; that he ran thereafter home with the Victim's handphone, and other details.²⁵⁵

158 In addition, Dr Phang interviewed the Accused's supervisor, Ms Wong Swee Leng ("Ms Wong"), on 17 February 2014. Apparently, Ms Wong stated that the Accused had been of good character, was punctual, with "more than satisfactory" work performance, and manifested no abnormal behaviour other than a single episode several months prior to the alleged offence when he appeared rather emotional but denied having any problem when asked.²⁵⁶

159 Taking into consideration the abovementioned account,²⁵⁷ Dr Phang maintained in his 1st and 2nd Reports that the Accused did not suffer from any major mental disorder at and around the material time of the alleged offence.²⁵⁸ Rather, the alleged offence was fundamentally a product of anger at having been rebuffed and rejected by the Victim and her family.²⁵⁹ In Dr Phang's 1st Report, he also characterised the Accused as being, at the material time of the alleged offence, "incensed, rather than insane".²⁶⁰ Further, the Accused was fit to plead and not of unsound mind at or around the material time of the offence.

²⁵⁵ NE Day 3, p 118.

²⁵⁶ Exhibit P65, para 11.

²⁵⁷ NE Day 4, p 4, lines 7-10.

²⁵⁸ Exhibit P66, para 17.

²⁵⁹ NE Day 3, p 114; NE Day 4, p 1, lines 19-22.

²⁶⁰ Exhibit P65, para 22.

160 In relation to specific mental conditions, Dr Phang stated the following in his 1st and 2nd Reports and in oral testimony during the Prosecution’s case:

(a) The Accused exhibited “very overt and definite histrionic personality traits”, but did not have a histrionic personality disorder.²⁶¹

(b) The Accused could recount vivid details of the incident, including before and after the stabbing, but not where he had stabbed the Victim (see [157(f)] above). In Dr Phang’s view, “this is... rather selective amnesia which is fundamentally not genuine amnesia at all.”²⁶²

(c) The Accused had consumed alcohol but this did not negate his ability to be cognisant of his actions then and to differentiate between right and wrong, because, among other things, the Accused remained able to recall exactly how much and which type of beer he had consumed, the shop from which he had purchased the beer and the number of visits to that shop (see [157(e)] above).²⁶³

(d) There was “quite possibly an element of acute stress reaction, particularly when he beheld the wallpaper picture of the alleged victim and [K] for the very first time...”²⁶⁴ However, Dr Phang unequivocally testified that he had not diagnosed an “acute stress disorder” as stated in the Diagnostic and Statistical Manual of Mental Disorders (5th Ed) (“DSM-V”).²⁶⁵

²⁶¹ NE Day 3, p 116, lines 1-11; Exhibit P65, para 21; Exhibit P66, para 16.

²⁶² NE Day 3, p 119, lines 9-17.

²⁶³ NE Day 4, pp 20-21; Exhibit P65, para 21; Exhibit P66, para 16.

²⁶⁴ Exhibit P65, para 65.

²⁶⁵ NE Day 4, p 35, lines 10-18.

(e) The Accused “may have had an adjustment disorder” at the material time of the offence, but this is merely a “transient minor mental disorder characterised by a normal psychological reaction to the vicissitudes of life”.²⁶⁶

(f) Dr Phang disagreed with Dr Rajesh’s opinion that the Accused suffered a moderate depressive episode at the material time of the offence. Rather, in Dr Phang’s opinion, the Accused “likely had an adjustment disorder with possibly acute stress reaction superimposed at the critical moment of committing the alleged stabbing.”²⁶⁷

161 Dr Phang declined to comment on what would have transpired had the Accused not had sight of the Victim’s handphone wallpaper.²⁶⁸

(2) Dr Rajesh’s written report

162 The Defence called Dr Rajesh, who gave two reports, only the first of which is written. This first report was dated 27 November 2015 (hereinafter referred to as Dr Rajesh’s 1st Report), and based on two interviews by Dr Rajesh of the Accused on 23 October 2015 (for 2 hours) and on 4 November 2015 (for 1.5 hours).²⁶⁹ The interviews with the Accused were conducted in Tamil, as Dr Rajesh assessed that the Accused “had difficulty communicating in English”.²⁷⁰ In addition, Dr Rajesh also spoke over the phone with the Accused’s mother on

²⁶⁶ Exhibit P65, para 22.

²⁶⁷ Exhibit P66, para 15.

²⁶⁸ NE Day 3, p 115, lines 1-10.

²⁶⁹ Exhibit D2, para 2.

²⁷⁰ Exhibit D2, para 2.

1 November 2015, but was unable to contact the Accused's workplace supervisors.²⁷¹

163 The factual bases on which Dr Rajesh's 1st Report was based were largely consistent with the Accused's testimony at trial. These were elicited through open-ended questions asked by Dr Rajesh.²⁷² The salient facts, focusing in particular on those which were not mentioned by Dr Phang, included the following:

(a) The Accused and the Victim met sometime in March 2013. After some interactions, the Accused was convinced that the Victim was in love with him. This was his first relationship with a woman.²⁷³

(b) Apparently, the Accused assessed his own work during this period to be "good" and that his supervisor was happy with him.²⁷⁴

(c) According to the Accused's mother, she had spoken with the Victim over the phone on several occasions. The Victim also mentioned to her about their marriage plan.²⁷⁵

(d) In June 2013, the Accused discovered that the Victim was sending intimate messages to C. The Accused was upset and confronted the Victim, but did not become physically aggressive. He subsequently avoided her for a few days. After that, the Victim invited him to her unit and committed sexual acts with him.²⁷⁶

²⁷¹ Exhibit D2, para 2.

²⁷² NE Day 13, pp 12, 14.

²⁷³ Exhibit D2, para 10.

²⁷⁴ Exhibit D2, para 11.

²⁷⁵ Exhibit D2, para 9.

(e) The Accused had no history of depressive episodes or heavy alcohol use.²⁷⁷ He started exhibiting depressive symptoms in June 2013 secondary to the relationship difficulties he had with the Victim.²⁷⁸

(f) The Accused went to his hometown in India in June 2013 for about 12 days. Apparently, his mother noticed that he was not mentally well and advised him to consult a psychiatrist in his hometown. The Accused was prescribed Amitriptyline, which the Accused took until the time of the offence. Dr Rajesh also stated that, according to the Accused's mother, she had advised the Accused to see a psychiatrist in India in June 2013 as the Accused was having "poor sleep" and that his mood was "sad most of the time".²⁷⁹ She did not observe the Accused to manifest any symptom of psychosis or personality disorder.²⁸⁰

(g) In August 2013, the Accused was invited by the Victim to her home. The Victim's father was home and rebuffed the Accused's expression of desire to marry the Victim. The father also said that the Accused resembled a "gardener" and asked him to leave. The Accused was "deeply" upset as the Victim did not say anything during this incident even though she was present.²⁸¹ Consequently, the Accused started having suicidal thoughts and continued drinking alcohol heavily. He went to a police station in Jurong West to talk about his relationship

²⁷⁶ Exhibit D2, para 12.

²⁷⁷ Exhibit D2, para 5.

²⁷⁸ Exhibit D2, para 4.

²⁷⁹ Exhibit D2, para 8.1.

²⁸⁰ Exhibit D2, para 8.2.

²⁸¹ Exhibit D2, para 14.

issues and suicidal thoughts, but was advised and sent home by an unnamed police officer.²⁸²

(h) In September 2013, the Victim suspected the Accused of being unfaithful to her. To prove his fidelity, the Accused went to the Victim's work place and cut his forearm with a paint scraper. Thereafter, he went to a general medical practitioner to obtain a medical certificate. The Accused did not reveal the true reason for his injury to the doctor as he "was aware that self-harm was a punishable offence in Singapore".²⁸³

(i) On 19 December 2013, the Accused went to the Victim's unit to tell her of gifts that he had bought her and his intention to marry her. The Victim's father again rebuffed him. The Accused then met K, who took him to the void deck and told him "Do you think [the Victim] is your wife? She is my wife and also my brother's wife". The Accused stated that he was "extremely upset" by K's remark and shouted to the Victim that he will commit suicide. He subsequently left the Block.²⁸⁴

(j) Dr Rajesh recorded that the Accused's mother had said that, on 19 December 2013, the Accused called her and told her that it was his last call and he would not be seeing her again. The Accused sounded drunk on the phone.²⁸⁵

(k) On the morning of 20 December 2013, after consuming around 15 to 17 cans of beer, the Accused saw the Victim walking out of the lift

²⁸² Exhibit D2, paras 14, 14.1.

²⁸³ Exhibit D2, para 13.

²⁸⁴ Exhibit D2, para 15.

²⁸⁵ Exhibit D2, para 8.2; NE Day 13, pp 12-13.

of her Block. He went up to her, grabbed her arm, and asked her to go with him. The Victim received a call on her handphone at that time, and the Accused saw a picture of the Victim and K in an intimate embrace. Seeing this, the Accused “lost [his] head”. He did not know what happened next and did not remember stabbing the Victim. The next thing he realised was that she was tugging at his shirt and said “I only desire to marry you, but my parents are objecting, I saw she was bleeding... I saw even blood flowing out from her eyes... she kissed me on my lips”. Once he saw that she was hurt, he beat his forehead and started crying. He wanted to stab himself but realised the knife was bent. While he attempted to straighten it, the Victim’s father came and assaulted him. The Accused ran away, looking for a nearby police station to surrender. He was subsequently stopped by a man and then arrested.²⁸⁶

(l) During the initial period of his remand, the Accused had difficulty sleeping and would see repeated images of the Victim’s bleeding face, which distressed him immensely. He also reported depressive symptoms. He was seen by the prison psychiatrist and given anti-depressants.²⁸⁷

(m) During the two interviews with Dr Rajesh, the Accused was alert, cooperative, and oriented in place and person. There were no perceptual disturbances, even though the Accused’s mood appeared depressed.²⁸⁸

²⁸⁶ Exhibit D2, paras 16-19.

²⁸⁷ Exhibit D2, para 21.

²⁸⁸ Exhibit D2, para 20.

164 Based on the abovementioned account, Dr Rajesh’s 1st Report recorded the following diagnoses:²⁸⁹

(a) The Accused suffered a “moderate depressive episode” with the onset of symptoms in June 2013 and was depressed at the material time of the offence.

(b) The Accused was intoxicated at the time of the offence with an estimated blood alcohol level of more than 250 mg/dl. He may have used alcohol as a way to cope with his depressive symptoms, but he did not qualify for alcohol dependence. Nevertheless, the Accused’s intoxication at the material time of the offence “may have contributed to his offence by impairing his judgment and leading to his action of stabbing the Victim...”²⁹⁰

(c) Dr Rajesh “did not find any evidence of histrionic personality traits during [his] assessment”. The diagnosis of personality issues required a longitudinal assessment with corroborative information. The Accused’s mother “did not report any aberrations of personality” *vis-à-vis* the Accused.

(d) The Accused was not of unsound mind and was fit to stand trial.²⁹¹

²⁸⁹ Exhibit D2, paras 22-23.

²⁹⁰ Exhibit D2, para 29.

²⁹¹ Exhibit D2, paras 24-27.

(3) Dr Rajesh's new oral report

165 In Court, Dr Rajesh revealed that he had a third interview with the Accused on 20 January 2017, after receiving Dr Phang's 2nd Report. Dr Rajesh thus orally supplemented his 1st Report with a second report (hereinafter referred to as Dr Rajesh's 2nd Report) only at trial.

166 The difference which Dr Rajesh sought to introduce in his 2nd Report was a new diagnosis that the Accused had suffered "acute stress reaction", or "acute stress disorder", for a period lasting a few minutes from the time he saw the photo on the Victim's handphone to around the time of the alleged offence.²⁹² According to Dr Rajesh, seeing the wallpaper on the Victim's handphone was a very significant traumatic event for the Accused; together with his alcohol intoxication and underlying depression, "all these factors contribute to him going into this acute stress reaction, where they go into a daze and they have amnesia."²⁹³ In this regard, Dr Rajesh opined that the Accused's acute stress reaction/disorder interfered with his capacity to form intent at the material time of the alleged offences.²⁹⁴

167 In totality, Dr Rajesh's new position was that the Accused had suffered moderate depression with an acute stress reaction superimposed at the critical moment of the alleged offences in the background of alcohol intoxication.²⁹⁵

²⁹² NE Day 13, p 25, lines 16-25.

²⁹³ NE Day 13, p 30, lines 21-27.

²⁹⁴ NE Day 14, p 17, lines 11-13; NE Day 14, p 2, lines 15-17.

²⁹⁵ NE Day 13, p 74, lines 16-17; NE Day 13, p 70, lines 19-20; NE Day 14, p16, lines 22-24.

168 When asked why a written report was not produced in advance of the trial crystallising his opinions drawn from the third interview with the Accused, Dr Rajesh replied that he was told by counsel for the Accused that he could give oral evidence in Court on this topic.²⁹⁶ While it is correct that such evidence could be given orally, it should have been given in a written form and a copy made available to the other party to avoid any surprise. This is particularly so when, as was the case here, the oral testimony concerned an important contention. Indeed, the Prosecution, perhaps taken by surprise by Dr Rajesh's new evidence, applied to recall Dr Phang as a rebuttal witness after Dr Rajesh gave his evidence. That invited in turn the Defence's application to call Dr Rajesh in surrebuttal, even though that application was eventually not pursued.²⁹⁷ As a matter of case management, much of this could and should have been better handled.

(4) Dr Phang's rebuttal evidence

169 In Dr Phang's rebuttal testimony, he maintained that he had used the DSM-V, and not the ICD-10 Classification of Mental and Behavioural Disorders ("ICD-10") to diagnose only an acute stress reaction (and not an acute stress disorder).²⁹⁸ Any confusion with a similar ICD-10 classification was inadvertent.²⁹⁹ Rather, when Dr Phang used the term "acute stress reaction" in his reports, he meant only a "clinical description of what essentially amounted to natural and expected anger on the part of the [A]ccused when he beheld the offending wallpaper".³⁰⁰ Therefore, in relation to the Accused's capacity to form

²⁹⁶ NE Day 13, p 22, lines 27-32.

²⁹⁷ NE Day 15, p 74, lines 1-3.

²⁹⁸ NE Day 15, pp 48-49; NE Day 15, pp 60-61.

²⁹⁹ NE Day 15, p 51, lines 25-29.

³⁰⁰ NE Day 15, p 50, lines 21-30.

intent, while the “acute stress reaction” that Dr Phang had diagnosed of the Accused could have made it more difficult for the Accused to control his impulses, the Accused could still have exercised the ability to resist what he did, but he did not; instead, “he gave in to his anger”.³⁰¹

Acute stress disorder or reaction

170 I turn now to elaborate on the three specific mental conditions in issue.

171 I pause to note that both Dr Rajesh and Dr Phang proceeded on the assumption that the Accused did see the wallpaper on the Victim’s handphone at the material time as that was what the Accused had informed each of them. For the time being, I will also proceed on that assumption.

172 The main mental condition that was disputed was that of acute stress disorder or reaction.

173 The DSM-V uses the term “acute stress disorder”.³⁰² According to the text, there are five main criteria for the diagnosis of this disorder: (a) exposure to actual or threatened death, serious injury, or sexual violation in one (or more) of the listed ways, (b) presence of nine (or more) of the listed symptoms from any one of the five categories of intrusion, negative mood, dissociation, avoidance, and arousal, beginning or worsening after the traumatic event(s) occurred, (c) duration of the symptoms in criteria (b) being three days to one month after the trauma exposure, (d) symptoms causing clinically significant distress or impairment in social, occupations, or other important areas of functioning, and (e) symptoms not attributable to the physiological effects of a

³⁰¹ NE Day 15, pp 57-58.

³⁰² Exhibit D11.

substance or another medical condition and is not better explained by brief psychotic disorder.

174 In relation to criteria (a) which relates to the requirement of exposure, the DSM-V included a “note” which stated: “This does not apply to exposure through electronic media... or pictures, unless this exposure is work related”.³⁰³ It is not clear what this means, and neither expert has explained or relied on this note. I therefore give no weight to it for present purposes.

175 The DSM-V entry for “acute stress disorder” expressly refers to “308.3 (F43.0)”, which is the reference to the ICD-10 entry for “acute stress reaction”.

176 The ICD-10 entry for “acute stress reaction”³⁰⁴ is numbered “F43.0”. It describes this reaction as a “transient disorder of significant severity which develops in an individual without any other apparent mental disorder in response to exceptional physical and/or mental stress and which usually subsides within hours or days”. The ICD-10 further explains that:

(a) The stressor may be an overwhelming traumatic experience involving serious threat to the security or physical integrity of the individual or of a loved person(s), or an unusually sudden or threatening change in the social position and/or network of the individual.

(b) Individual vulnerability and coping capacity play a role in the occurrence and severity of acute stress reactions. Not all people exposed to exceptional stress develop the disorder.

³⁰³ Exhibit D11, p 149.

³⁰⁴ Exhibit D10.

(c) The symptoms usually appear within minutes of the impact of the stressful stimulus or event, and disappear within 2-3 days (often within hours). Partial or complete amnesia for the episode may be present.

(d) In terms of the diagnostic guideline, there must be an immediate and clear temporal connection between the impact of an exceptional stressor and the onset of symptoms: onset is usually within a few minutes, if not immediate. In addition, the symptoms must show a mixed and usually changing picture (*eg*, daze, depression, anxiety anger, despair, overactivity, and withdrawal may all be seen but no one type predominates for long), and the symptoms must resolve rapidly (within a few hours at most) in those cases where removal from the stressful environment is possible.

(1) Dr Rajesh's evidence

177 The Defence's case was that the Accused suffered from "acute stress disorder" within the meaning of the term in DSM-V at the material time, and therefore lacked the capacity to form an intention to kill the Victim.

178 According to Dr Rajesh's 2nd Report which he gave orally in Court, when the Accused saw the wallpaper on the Victim's handphone, it was a very significant traumatic event for the Accused and caused him to suffer a condition called "acute stress disorder". This was a transient but severe disorder within the meaning of the term in DSM-V.³⁰⁵ This acute stress disorder interfered with the Accused's capacity to form intention at the material time of the alleged offence.³⁰⁶

³⁰⁵ Exhibit D11.

179 Dr Rajesh accepted that his diagnosis of acute stress disorder and attendant opinion on the Accused's lack of capacity to form intent was not expressed in his written report dated 27 November 2015 (*ie*, Dr Rajesh's 1st Report), but was instead raised for the first time during Dr Rajesh's oral testimony in Court (*ie*, Dr Rajesh's 2nd Report). However, Dr Rajesh explained that this was because he came to this diagnosis and opinion only after he had reviewed Dr Phang's 2nd Report and conducted a third interview with the Accused. As at the time of Dr Rajesh's 1st Report, Dr Rajesh was still of the view that the Accused had the capacity to form an intention to kill the Victim.³⁰⁷

180 Dr Rajesh added that the Accused's alcohol intoxication at the material time, and his underlying moderate depression, "contribute to him going into this acute stress reaction [or acute stress disorder], where they go into a daze and they have amnesia."³⁰⁸ However, Dr Rajesh appears to suggest that, compared with the diagnoses of moderate depression and alcohol intoxication, the Accused's acute stress disorder was the primary reason for his view that the Accused had lacked capacity to form intent:

In this case, the actual offence, I would link it to the --- the capacity to form intent --- lack of capacity to form intent, I would link it to the acute stress disorder. The depression is the --- is the underlying substrate.

(2) Dr Phang's evidence

181 Dr Phang maintained that the Accused suffered from an "acute stress reaction", which to Dr Phang meant only a "clinical description of what essentially amounted to natural and expected anger on the part of the [A]ccused

³⁰⁶ NE Day 14, p 21, lines 28-31.

³⁰⁷ NE Day 14, pp 21-22.

³⁰⁸ NE Day 13, p 30, lines 21-27.

when he beheld the offending wallpaper”.³⁰⁹ To this end, Dr Phang had the DSM-V in mind when he made the assessment, but had not diagnosed an “acute stress disorder” within the meaning of DSM-V.³¹⁰ Further, the references to “acute stress reaction” in Dr Phang’s 1st and 2nd Reports were *not* references within the meaning of the terms as defined in the ICD-10. Any confusion with the ICD-10 entry for “acute stress reaction” was “inadvertent” and “unintended”.³¹¹ In fact, Dr Phang did not even have ICD-10 in his contemplation at the time he drafted his 1st and 2nd Reports.³¹² Dr Phang said that he was certain of this because, as a general rule, he no longer used the ICD-10, which was published in 1992 and therefore in his view outdated compared to the DSM-V which was published in 2013.³¹³ Dr Phang testified that if he had applied the ICD-10 criteria to this case, he would not have diagnosed “acute stress reaction” within the meaning of ICD-10.³¹⁴

182 On that premise, Dr Phang explained that, at the material time, the Accused did not lack the capacity to form intent. While it may have been “a bit difficult” for the Accused to control his impulses, he had not “lost the capacity to control his impulses”. Nor was it “impossible for him to rein in his anger”.³¹⁵

³⁰⁹ NE Day 15, p 50, lines 21-30.

³¹⁰ NE Day 15, pp 50-51; NE Day 15, p 53, lines 25-28.

³¹¹ NE Day 15, p 51, lines 25-29.

³¹² NE Day 15, p 49, lines 19-26; NE Day 15, p 53, lines 24-28.

³¹³ NE Day 15, p 49, lines 10-14.

³¹⁴ NE Day 15, p 54, lines 3-8.

³¹⁵ NE Day 15, pp 57-58.

The marked physiological reaction of symptom 4 in DSM and he himself said that he lost control of his temper at that point in time and therefore he stabbed the victim. But even then, he could still have exercised the ability not --- to --- to resist what he did, but he did not. In other words, he gave in to his anger... To put it another way... there was no irresistible impulse, as in an impulse control disorder, which is another diagnostic rubric... wherein the individual who has an impulse control disorder has lost the capacity to control his impulses. There was none of that. It may have been a bit difficult for him to control his impulses, the variables being that he could have been somewhat intoxicated at that point in time, you know, his individual resilience and so on, to name two probable factors but it was not impossible for him to rein in his anger and he did not. Hence, the stabbing took place.

183 Dr Phang accepted that *if* the Accused had been properly and formally diagnosed with “acute stress disorder” in the DSM-V sense of the term, “there is a possibility that it would have affected his mental capacity to form an intention to commit the --- the crime alleged.”³¹⁶ However, on the facts, that assumption was not tenable because the Accused’s account of the incident showed that he was fully cognisant of what he was doing at the material time.³¹⁷ In Dr Phang’s view, the alleged offence was fundamentally a product of the Accused’s anger at having been rebuffed and rejected by the Victim and her family.³¹⁸

(3) My assessment

184 For the reasons stated below, I am of the view that the Accused did not suffer from “acute stress disorder” in the sense of the term used in DSM-V. Nor did the Accused suffer from “acute stress reaction” under the ICD-10.

³¹⁶ NE Day 15, p 57, lines 1-10.

³¹⁷ NE Day 15, p 57, lines 10-17.

³¹⁸ NE Day 3, p 114; NE Day 4, p 1, lines 19-22.

185 I turn first to examine the evidence of Dr Rajesh. I do not accept his evidence for two reasons.

186 First, there are material internal inconsistencies between Dr Rajesh's evidence in Court on Day 13 and Day 14 of the trial as to whether and how an acute stress disorder would affect the Accused's capacity to form intent.

187 In this regard, at several points in his testimony in Court on Day 14, Dr Rajesh opined that the Accused's "stress disorder which he experienced after seeing the image on the phone... interfered with his capacity to form intent at the material time."³¹⁹ At one point, Dr Rajesh went so far as to positively state that the Accused "did not have the capacity to form intention because of... acute stress disorder".³²⁰

188 However, previously on Day 13 of the trial, when pressed during cross-examination, Dr Rajesh appeared to take the position that the Accused's acute stress disorder affected his impulse control and judgment, but *did not* deprive the Accused of the capacity to form an intention to kill the Victim.³²¹

Q ... in what way did the [Accused's] stress disorder affect... the intention that he had to kill her?

A Accused's stress disorder will definitely affect his impulse control. It will affect his judgment and also considering the background of intoxication he had the previous night which against impairs the impulse control. It is a combination of both. So it --- it --- it inhibits your impulse control. So your --- you become more impulsive at the time because it is a well-defined mental disorder which is classified on both the systems.

Q But even if he had seen this photo, he could have formed the intention to have killed her, right? Intention is not in any

³¹⁹ NE Day 14, p 17, lines 11-13; NE Day 14, p 2, lines 15-17.

³²⁰ NE Day 14, p 21, lines 21-31

³²¹ NE Day 13, pp 67-68.

way affected, the intention to kill her can still be formed, correct?

A But what contributes to the intention is a crucial issue.

Q No, no. The contribution aside, the intention can still be formed at that time, right? Even if he had seen this photo, he can then still have the intention to kill her.

A Yes, because he --- he --- looking at it, he realised he -- - he stabbed her actually.

Q Yes.

A So he went ahead and stabbed her.

Q Yes, so intention can be formed.

A It can be formed but again crucial to look at the --- how much alcohol contributed to it ---

Q Yes.

A --- as well as the --- the contributory factors of the stress disorder or both.

189 In fact, Dr Rajesh had subsequently repeated, also on Day 13 of the trial, that the Accused, even if suffering from acute stress disorder, could nevertheless have formed the intention to kill the Victim at least in some instances:³²²

[Referring to the Accused's 4th Statement, paragraph 4]

Q Ok... so where he says to the police:

[Reads] "My first intention" --- was --- "to go and find her and to kill myself" --- and --- "after I see the picture on her" --- handphone --- "I then want to kill her and after that kill myself"

That is perfectly possible?

A Yah, because according to the statement, he came, he mentions that.

Q Okay.

If I assume that the [Accused] was suffering from acute stress disorder... this is still possible from an accused person, right?

³²² NE Day 13, p 69.

A Yes, because he has told the --- the IO that he had the intention after seeing the picture.

Q Yes.

A So, going by the --- the statement, it shows that he had the intention.

Q Okay.

A But it's possible acute stress disorder, they do not have the intention as well.

Q Yes.

A But going by this statement, he has told the police.

190 In my view, Dr Rajesh was not consistent as to whether and how the Accused's acute stress disorder which he diagnosed (under the DSM-V) deprived the Accused of the capacity to form intent. These inconsistencies are not explicable on the basis merely of imprecise expression, even if I take into account the fact that Dr Rajesh's 2nd Report was given orally and not in writing.

191 The second reason why I do not accept Dr Rajesh's evidence relates to the credibility of the reasons for his 2nd Report. To this end, I note that Dr Rajesh was not able to explain adequately why he had decided to conduct a third interview with the Accused in January 2017 and to come up with his 2nd Report which was materially different from his 1st Report. In his 1st Report, Dr Rajesh had found that the Accused was not suffering from unsoundness of mind and had the capacity to form intent.³²³ At that time, Dr Rajesh did not mention acute stress reaction or acute stress disorder. His diagnosis was moderate depression instead (see [164] above). Yet, in his 2nd Report, Dr Rajesh took an entirely different approach and diagnosed a full-blown "acute

³²³ NE Day 14, p 22, lines 25-31.

stress disorder” (under the DSM-V) which so seriously affected the Accused that it negated his capacity to form intent at the material time.

192 According to Dr Rajesh, he was triggered to have a third interview with the Accused and to prepare his 2nd Report because he had noticed that Dr Phang’s 2nd report used stronger language about the existence of acute stress disorder/reaction than Dr Phang’s 1st Report. In Dr Phang’s 1st Report, Dr Phang said that there was “quite possibly an element of acute stress reaction, particularly when he beheld the wallpaper picture... for the first time”.³²⁴ However, in Dr Phang’s 2nd Report, he said “As I have earlier opined, the [A]ccused likely had an adjustment disorder with possibly acute stress reaction superimposed at the critical moment of committing the alleged stabbing.”³²⁵

193 Dr Rajesh said he noted two material shifts from Dr Phang’s 1st Report. First, in his view, the omission of the words “an element of” in the later report was significant. Dr Rajesh appeared to be implying that the omission suggested the likelihood of acute stress reaction in the Accused (in the ICD-10 sense). In both reports, Dr Phang had used the term “acute stress reaction”. In Dr Rajesh’s words, Dr Phang is a “very experienced psychiatrist” and his use of that term alluded to the ICD-10 condition of “acute stress reaction”, which is itself a psychiatric disorder.³²⁶ Further, Dr Phang’s use of the term “acute stress reaction” also called to Dr Rajesh’s mind the condition of “acute stress disorder” under the DSM-V, which is expressly cross-referenced to the condition of “acute stress reaction” under ICD-10.³²⁷ Thus, Dr Rajesh conducted

³²⁴ Exhibit P65 at para 22.

³²⁵ Exhibit P66, para 15.

³²⁶ NE Day 14, pp 28-30.

³²⁷ NE Day 14, p 15.

the third interview to revisit and clarify his questions about this condition with the Accused.³²⁸ In this regard, even though Dr Phang had explained during the Prosecution’s case that he had not diagnosed “acute stress disorder” in the DSM-V sense but only found “acute stress reaction” which was “a merely normal and understandable stress reaction”,³²⁹ Dr Rajesh was of the view that this was contradicted by Dr Phang’s own evidence that he had used the term “acute stress reaction” as a “psychiatry term” rather than in the layman sense.³³⁰

194 Secondly, Dr Rajesh stressed that Dr Phang’s 2nd Report had referred to “the critical moment of committing the alleged stabbing” and this appeared to emphasize that the Accused’s mental capacity at the material time was affected. Thus, in Dr Rajesh’s view, Dr Phang was more certain about the existence of acute stress reaction (in the ICD-10 sense) in his 2nd Report than in his 1st Report.

195 I address the second reason first. It is obvious that any relevant mental reaction or disorder noted by an expert for a criminal case must be present at the “critical moment” of the alleged offence. Otherwise, that mental condition would be immaterial, if not irrelevant, to the conviction of the accused. The reference to the critical moment in Dr Phang’s 2nd Report was clearly not an additional or independent reason or finding put forth by Dr Phang, but simply part of his overall opinion. I do not see how that could have suggested a shift in Dr Phang’s opinion.

³²⁸ NE Day 13, p 76, lines 17-31; NE Day 14, p 28, lines 10-22; NE Day 13, p 73.

³²⁹ NE Day 4, p 35, lines 10-18.

³³⁰ NE Day 14, pp 7-10.

196 I come back to Dr Rajesh's first reason. While he focussed on paragraph 15 of Dr Phang's 2nd Report, he did not mention paragraph 8 of the same report, which states: "While there was quite possibly an element of acute stress reaction, particularly when he beheld the wallpaper picture of the alleged victim and [K] for the very first time, I am persuaded that he was incensed, rather than insane, and consequentially committed the said alleged offence".³³¹ Notably, the phrase "quite possibly an element of acute stress reaction" mirrored Dr Phang's language in his 1st Report.

197 Further, the opening words of paragraph 15 of Dr Phang's 2nd Report stated "As I have earlier opined...". This clearly meant that Dr Phang's 2nd Report could not have intended to indicate a different emphasis.

198 Moreover, Dr Phang's overall opinion in his 1st Report and in his 2nd Report was the same. Both reports opined that there was no unsoundness of mind. Nor did either report allude to any other possible defence stemming from the Accused's mental condition.

199 In my view, Dr Rajesh was using Dr Phang's 2nd Report to his own convenience (as Dr Phang mentioned in his rebuttal evidence)³³² to justify why Dr Rajesh himself had changed his own opinion. I accept that Dr Phang should have been more cautious with his use of the words "acute stress reaction" in his two reports, and Dr Phang himself appears to accept this.³³³ Nevertheless, it must have been obvious to any reasonable expert reading both of Dr Phang's reports that Dr Phang was not making any significant change in emphasis in his 2nd

³³¹ Exhibit P65 at para 22; Exhibit P66 at para 8.

³³² NE Day 15, p 53, lines 8-10.

³³³ NE Day 15, p 53.

Report. It must also have been obvious that Dr Phang was not suggesting any serious mental condition or disorder on the part of the Accused at the material time of the alleged offence.

200 Furthermore, the possibility of an element of “acute stress reaction” (whether or not in the ICD-10 sense) was already mentioned in Dr Phang’s 1st Report. Being an expert, Dr Rajesh could not have overlooked that when he prepared his 1st Report. Indeed, he did not say that he had overlooked this. So, he must already have taken this into account when he interviewed the Accused twice before issuing his 1st Report. If he truly believed that Dr Phang’s 1st Report was referring to acute stress reaction in the ICD-10 sense, and if it was his own opinion that the Accused had been suffering from acute stress reaction in the ICD-10 sense and/or acute stress disorder in the DSM-V sense, then, after his first two interviews with the Accused, his 1st Report would have reflected that opinion. Yet, Dr Rajesh’s 1st Report did not mention that the Accused suffered from either of these mental conditions, *ie*, acute stress reaction in the ICD-10 sense or acute stress disorder in the DSM-V sense.

201 Something had caused Dr Rajesh to reconsider his 1st Report. It may have been because Dr Rajesh was subsequently shown (after issuing his 1st Report) various written statements of the Accused to the police, *ie*, the 1st to 4th Statements, in which the Accused appeared to admit that he did intend to kill the Victim. Whatever the real reason, it was clearly not Dr Phang’s 2nd Report.

202 Another reason that Dr Rajesh initially proffered for his change in position was that he had re-clarified the symptoms of acute stress disorder/reaction with the Accused during their third interview in January 2017.

Yet, when he was pressed during cross-examination as to what new information he had received from his third interview, he was evasive. At some point, he even said that he “[did not] change any diagnosis” between his two reports.³³⁴ This was clearly not correct. If it were, there would have been no need for a new report from him and no need to re-examine the questions of the Accused’s purported acute stress disorder/reaction or the Accused’s capacity to form intent, since these were not issues raised in Dr Rajesh’s 1st Report. Eventually, Dr Rajesh agreed that he did not elicit or receive any new information from his third interview.³³⁵ It seems to this Court that the third interview was an excuse for him to come to a different conclusion in his 2nd Report.

203 For the reasons stated, I do not accept the evidence of Dr Rajesh as it was neither consistent nor credible. I turn now to Dr Phang’s evidence which I accept for three reasons.

204 First, Dr Phang’s evidence was consistent with the objective and contemporaneous evidence. As Dr Phang opined, it was inexplicable for the Accused to be able to recount vivid details of the incident on 20 December 2013, including details as to what had happened immediately before and after the stabbing, but not be able to remember the details as to how and where he had stabbed the Victim which were of an incriminating nature (see [160(b)] above).

205 In this regard, several pieces of information provided by the Accused himself support Dr Phang’s opinion that the Accused could not have been truly

³³⁴ NE Day 14, p 30, line 1.

³³⁵ NE Day 14, p 31, lines 21-26.

dissociated or have had a complete loss of awareness of his surroundings at the material time of the alleged offence.³³⁶ For instance:

(a) The Accused consistently and repeatedly testified that, after he became aware that he had attacked the Victim, he wanted to commit suicide but realised that the knife had a bent tip. He thus tried to straighten the knife in order to commit suicide (see [51] above).

(b) In his 2nd Statement, which was taken only hours after the incident, the Accused stated that after the Victim's father had arrived at the scene and struggled with him, "I then saw [the Victim's] handphone on the floor, I then took the handphone run away across the road... I took her handphone as I wanted to show the police for the evidence that she is cheating me with another guy".³³⁷

(c) The Accused could recount to Dr Phang that he had inadvertently cut his palm during the attack because he was holding the knife too tightly (see [157(f)] above).³³⁸

206 These facts suggest that the Accused had a significant presence of mind both during and immediately after his attack on the Victim. He could form and act on a belief that it would be better for him to straighten the tip of the knife before committing suicide. He could also crystallise an intention to turn himself in to the police, and direct his mind to the evidence necessary to prove the Victim's infidelity despite the chaotic situation that he must have been in. These facts are inconsistent with the Defence's case that the Accused had no capacity

³³⁶ NE Day 4, pp 35-36.

³³⁷ AB543C.

³³⁸ NE Day 4, p 37.

to form intent. Thus, the more persuasive view was Dr Phang's – that the Accused's claim to have forgotten how and how many times he had stabbed the Victim must have been "selective amnesia which is fundamentally not genuine amnesia at all".³³⁹

207 The Defence submitted that the Accused could only remember events before and after the actual attack, and that his memory returned only when the Accused purportedly started to beat his forehead.³⁴⁰ However, that was precisely Dr Phang's point: the Accused was practicing "selective amnesia" in an attempt to buttress his defence. Dr Rajesh's testimony did not offer any other reason why the Accused could have so coincidentally lost awareness or recollection of the details of the immediate attack but still been aware of and remember much of the details which immediately precede and follow that short period.

208 Secondly, Dr Phang's evaluation had an advantage over Dr Rajesh's: Dr Phang's interviews of the Accused and his assessment of the Accused's mental state were far more contemporaneous than Dr Rajesh's. In this regard, it was not disputed by either expert that the closer the time of the assessment to the time of the incident, the more accurate the assessment *vis-à-vis* the Accused's mental state at the time of the incident is likely to be.

209 Initially, Dr Rajesh opined that even though he had assessed the Accused at a later date compared to Dr Phang, that was not a major limitation because psychiatric diagnoses are in any event based on retrospective information collection and discernment of the Accused's symptoms.³⁴¹ Nevertheless, there

³³⁹ NE Day 3, p 119, lines 9-17.

³⁴⁰ Defence's Closing Submissions at para 14.1.

³⁴¹ NE Day 13, pp 32-33.

are benefits to contemporaneity. As far as acute stress disorder/reaction is concerned, it is important to have the opportunity to observe the patient's conduct and demeanour very soon after the alleged offence since, by Dr Rajesh's own evidence, acute stress disorder/reaction is a "short-lived episode" which symptoms only last for up to a few days.³⁴²

210 Indeed, Dr Rajesh candidly accepted under cross-examination that Dr Phang, having the benefit of a more contemporaneous assessment and access to the electronic medical records of the Changi Prisons, would have had been able to make a more accurate assessment of the Accused's condition:³⁴³

A Acute stress disorder resolves within 1 month. So because I'm not --- hypervigilance, startle response, concentration happens in the first few hours or few days after the event. So I was not there at that time. It's an observe --- behavioural observation. So if I see him 2 years later, it will not be there because it's already resolved. ...

[...]

Q And because they would last only for a few hours to a few days, the earlier in time the assessment is done, the better it would be for that ---

A Yes.

Q --- to be an accurate assessment.

A Yah. It is better definitely.

Q And ---

A And in --- in this case because a lot of these symptoms are actually observational symptoms.

Q Yes.

A Observing. So observing startled response, observing concentration difficulty.

Q Yes

³⁴² NE Day 13, p 74, lines 4-6.

³⁴³ NE Day 14, p 47.

A Hypervigilance, irritable behaviour, angry outburst.

Q Yes. And ---

A So all that would have --- would have been mentioned in the [electronic medical records] as well ---

Q Sure.

A --- which Dr Phang would have had a look in the CMC.

211 The third reason for finding that the Accused did not suffer from “acute stress disorder” (in the DSM-V sense) and hence did not lack capacity to form intent was that even though the DSM-V requires as part of the diagnostic criteria “[p]resence of nine (or more) of the following symptoms”, Dr Phang’s had only found one of the 14 symptoms listed in the DSM-V satisfied *vis-à-vis* the Accused: intense psychological distress.³⁴⁴ Even on Dr Rajesh’s account, only seven out of 14 symptoms listed for acute stress disorder in DSM-V could be identified *vis-à-vis* the Accused.³⁴⁵ Dr Rajesh explained that a holistic assessment of the Accused’s mental state was more appropriate than a listing or checklist approach to psychiatric diagnosis.³⁴⁶ I accept that a checklist approach might be too mechanistic. However, as I understand Dr Phang’s evidence, psychiatric diagnosis is not a free-for-all and it is “intelligent flexibility” that is permitted. For example, if the diagnostic criteria requires five out of nine symptoms and the patient only shows four but those four symptoms are “so prominent and have caused so much dysfunction to the individual’s life, you can still diagnose it even if he does not meet the strict five out of nine”.³⁴⁷ I do not understand the eschewing of a checklist approach to mean that the

³⁴⁴ NE Day 15, pp 50-51.

³⁴⁵ NE Day 14, pp 43-45.

³⁴⁶ NE Day 14, p 44, lines 25-27; NE Day 14, p 45, lines 17-31.

³⁴⁷ NE Day 15, p 56, lines 3-18.

quantitative aspect of the diagnostic criteria for “acute stress disorder” under the DSM-V is entirely insignificant.

212 Finally, I turn to the Defence arguments on why Dr Phang’s evidence should be treated with caution.

213 First, the Defence criticised Dr Phang for failing to elicit from the Accused during their interviews whether the Accused had suffered from flashbacks, which is a symptom of “acute stress disorder” under the DSM-V.³⁴⁸ Dr Rajesh explained that it was important to actively elicit such symptoms, because patients would not otherwise volunteer the information.³⁴⁹

214 In this regard, Dr Rajesh testified that, after his arrest, the Accused had difficulty sleeping and repeatedly saw distressing images of the Victim’s bleeding face. However, the Accused did not report his flashbacks to anyone while initially remanded in the Changi Medical Centre, because he was not sure how to do it and by what process he could do so.³⁵⁰ Subsequently, after the Accused was transferred to another cluster on 21 February 2014, he reported symptoms of low mood and poor sleep to the prison psychiatrist. The prison psychiatrist then prescribed certain medication including anti-depressants and sedatives to the Accused.³⁵¹

215 Under cross-examination, Dr Phang conceded that he did not expressly ask the Accused whether he had any flashbacks.³⁵² However, Dr Phang testified

³⁴⁸ Exhibit D11.

³⁴⁹ NE Day 14, p 53, lines 13-19.

³⁵⁰ NE Day 13, p 15, lines 12-15.

³⁵¹ NE Day 13, p 18.

³⁵² NE Day 15, p 66, lines 18-22.

that if the Accused had suffered from flashbacks, he would have detected and reported it in his reports. It was “very obvious” if a person suffered from flashbacks. Such a person would not have shown the “confidence” that the Accused did during his interview with Dr Phang, or been as “happy... forthcoming... overeager” as the Accused was.³⁵³ Thus, in Dr Phang’s view, the Accused did not suffer from any flashbacks at all.

216 In any event, based on what Dr Phang had known at the time of the assessment, there would have been no difference in Dr Phang’s assessment as to the Accused’s state of mind at the material time even if he knew that the Accused suffered from flashbacks. Thus, there was no point in asking about flashbacks “for the sake of asking it”.³⁵⁴

217 In my view, Dr Phang could have expressly asked if the Accused suffered from flashbacks, but his omission to do so does not render his opinion as to the Accused’s mental state suspect. As Dr Phang explained, even if he had asked and the Accused had responded in the positive, his opinion would have remained the same. Further, I see some force in Dr Phang’s observation that if the Accused had in fact been suffering from distressing flashbacks, that would have been apparent to a trained psychiatrist observing him at that time. I am also not persuaded by the Accused’s apparent reason for not reporting his alleged distressing flashbacks to anyone while being remanded in the Changi Medical Centre. The Accused explained that he had kept silent because he was not sure how and by what process he could report his flashbacks to someone (see [214] above). However, his remand in the Changi Medical Centre coincided with the period when Dr Phang was assessing him regarding his mental state. The

³⁵³ NE Day 15, p 58, lines 16-32.

³⁵⁴ NE Day 4, p 41, lines 13-17.

Accused must have known that he could have consulted or reported his flashbacks to Dr Phang.³⁵⁵ The fact that he did not warranted an adverse inference against the veracity of his belated reports of flashbacks to Dr Rajesh.

218 The Defence’s second challenge was against Dr Phang’s neutrality. They pointed to certain language used in Dr Phang’s 1st and 2nd Reports which, in their view, contained negative connotations about the Accused.³⁵⁶ They also submitted that Dr Phang’s neutrality was coloured and his assessment of the Accused was tainted after he had concluded that the Accused displayed histrionic traits.³⁵⁷

219 In cross-examination, Dr Phang explained the reasons for which he used certain words in his 1st and 2nd Reports. For instance, Dr Phang testified that he put the word “supposedly” in paragraph 8 of Dr Phang’s 1st Report because this was what was told to him and he had no way of verifying it one way or the other: “That’s why I added the word in parenthesis.”³⁵⁸ As another example, Dr Phang explained that he had added the word “interestingly” in the sentence “Interestingly enough, he agreed that he did not have a wrist watch then but was still able to keep reasonable track of the passage of time” because he was of an older generation who tended to use wrist watches to keep time rather than handphones.³⁵⁹

220 Evidence of partiality is a vital consideration in evaluating expert testimony (*Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at

³⁵⁵ NE Day 13, p 15, lines 12-15.

³⁵⁶ Defence’s Closing Submissions at para 12.6.

³⁵⁷ Defence’s Closing Submissions at para 14.5.

³⁵⁸ NE Day 4, p 64, lines 19-25.

³⁵⁹ NE Day 4, p 65.

[76]; *Eu Lim Hock Lai v Public Prosecutor* [2011] 3 SLR 167 at [56]). In my view, Dr Phang's language does not bring his neutrality into question. In this regard, although language is one potential indicator of partiality, the Courts should be slow to police the tone, word choice, or writing style of experts. Strong language, verbosity, a conversational or a terse and concise style are often matters of personal preference and habit rather than evidence of partiality. Rather, partiality of experts may be better assessed through an examination of the expert's reasons and logical rigour. For instance, an inexplicable leap of logic in favour of a particular party would suggest partiality and raise a red flag. Nothing of that sort was present to suggest that Dr Phang's 1st and 2nd Reports, or his testimony in Court, were influenced by partiality.

221 Further, the fact that Dr Phang had recorded down his observations as to the Accused's conduct and traits during their interviews did not in itself mean that he was partial or lacked independence. One complaint raised by the Defence was that Dr Phang had stated in Dr Phang's 1st Report that the Accused was "unnecessarily verbose and over-inclusive", even though the Accused could only speak in Tamil and simple English, and Dr Phang could only understand the former through interpretation.³⁶⁰ However, one does not necessarily need to understand a foreign language in order to be able to opine that a foreign language speaker was verbose. The fact that Dr Phang recorded his view that the Accused was verbose thus does not mean that he lacked neutrality. I add that I am also of the view that the Accused was verbose when he was giving evidence orally in Court.

222 For the abovementioned reasons, I find that the Accused did not suffer from "acute stress disorder" (under the DSM-V) or "acute stress reaction"

³⁶⁰ Defence's Closing Submissions at para 14.5.

(under ICD-10) at the material time and therefore was not deprived of his capacity to form intent by virtue of such a condition.

223 Finally, I note that significant time in Court was spent on eliciting the experts' opinion on the relative merits of the DSM-V and the ICD-10, and their popularity in different parts of the world. In this regard, time was also spent on the issue of whether the DSM-V's or the ICD-10's description of acute stress disorder or reaction was preferable. In Singapore, apparently, the ICD-10 is the official diagnostic criteria,³⁶¹ but the DSM-V has become increasingly popular because the ICD-10 was published more than 20 years before DSM-V and may be relatively outdated.³⁶²

224 In my view, it is not the Court's role to create a hierarchy between the ICD-10 and the DSM-V, or to expound on the authoritativeness of either diagnostic manual. Both regimes are generally accepted by the psychiatric profession. Indeed, Dr Rajesh and Dr Phang agree that both the ICD-10 and DSM-V are professionally acceptable,³⁶³ and there is no right or wrong in using either.³⁶⁴

Moderate depressive episode

225 The second mental condition that was disputed is that of moderate depression, which for present purposes is synonymous with a "moderate depressive episode".

³⁶¹ NE Day 4, p 31, lines 11-12.

³⁶² NE Day 15, pp 64-65.

³⁶³ NE Day 4, p 31, lines 11-12.

³⁶⁴ NE Day 13, p 20, lines 31-32.

(1) Dr Rajesh's evidence

226 Dr Rajesh took the view that the Accused suffered a “moderate depressive episode” with the onset of symptoms in June 2013 and was depressed at the material time of the offence. According to Dr Rajesh, the Accused had an episode of self-harm in August 2013, and also had gone to the police station reporting suicidal thoughts in the same month. Thus, Dr Rajesh opined that, at the material time of the alleged offence, the Accused “had the intention to commit suicide with the knife he carried in front of the [V]ictim as he was extremely distressed with the events, which happened before the material time.”³⁶⁵ Further, there was a “significant contributory link” between his depression and the offence.³⁶⁶ In addition, Dr Rajesh also relied on what the Accused's mother had informed him as corroboration of a diagnosis of moderate depression.

(2) Dr Phang's evidence

227 Dr Phang disagreed with Dr Rajesh that the Accused suffered moderate depression at the material time of the alleged offence.

228 According to Dr Phang, clinical depression is “one of the most disabling of illnesses characterised by severe emotional disturbance, a state of deep despondency and hopelessness, far exceeding the limits of normal human variation”.³⁶⁷ This is defined by “a constellation of symptoms which collectively result in significant dysfunction to the individual concern”. For one, it is not simply a transitory downturn of mood in response to the vicissitudes of life; the

³⁶⁵ Exhibit D2, paras 22, 29.

³⁶⁶ Exhibit D2, paras 26, 29.

³⁶⁷ NE Day 4, p 11, lines 14-17.

depressed mood must be of far greater intensity, duration, and pervasiveness. In addition, there would also be a lack of emotional reactivity or resonance (*ie*, that person cannot respond normally to normally pleasurable circumstances or surroundings due to a loss of interest and enjoyment), psychomotor retardation (*ie*, where the depressed individual withdraws into a shell and does not respond to others in the normal way), depressive cognitions such as gloom, hopelessness, worthlessness, and loneliness,³⁶⁸ poor concentration, ideas of self-harm, disturbed sleep, delusions, anxiety and others. Most importantly, a depressed individual “would not be able to function in the various spheres and domains of life.”³⁶⁹

229 In this regard, Dr Phang considered that Dr Rajesh had no evidential basis to diagnose a moderate depressive episode at or around the material time of the offence, even though the Accused may have developed depression post-offence while awaiting trial in remand.³⁷⁰ In contrast, based on Dr Phang’s interview of the Accused and his supervisor, Ms Wong, the Accused was well liked by his supervisor, had good work performance, and even worked in the Intensive Care Unit (“ICU”) which demanded more competence of the staff; save for one incident several months prior to the alleged offence, there was no manifestation of any abnormal behaviour or depressive symptoms (see [158] above).³⁷¹

³⁶⁸ NE Day 4, pp 8-10.

³⁶⁹ NE Day 4, p 11, lines 17-19.

³⁷⁰ NE Day 4, p 12, lines 2-4.

³⁷¹ NE Day 4, pp 16-17.

(3) My assessment

230 At the outset, I note that even if the Accused were suffering from moderate depression, it did not affect his capacity to form intent at the material time. Indeed, it was Dr Rajesh's evidence that the Accused's depression did not deprive him of the capacity to form intention, although it suggests that he did not *in fact* have the intention to kill the Victim.³⁷²

Witness In moderate depression, the --- actually, the intention is to actually harm themselves, not others. Unless the depression is so severe with psychotic or delusional thinking, then they may harm the other person and they may kill themselves. But in moderate depression, the --- the risk of harm is actually to themselves.

Court So, are you saying that a person who has moderate depression is just incapable of forming an intention to harm?

Witness No, I'm not saying that, no.

Court That's what I'm trying to understand.

Witness Yah. No, no, depression is a --- is a heterogeneous condition. It can manifest differently in different people based on their vulnerability, their coping styles. It's different.

Court Right.

Witness So, as general, I don't --- I don't say that it --- it will likely --- it inhibits the capacity to form intent.

Court Right.

Witness This ---

Court So, in the case of this accused person, are you saying he didn't even have the mental facility to have that kind of intention? It's just not possible because he was so depressed that ---

Witness No. I --- I wouldn't say that, no.

Court So, you wouldn't say that?

Witness Yah.

³⁷² NE Day 14, pp 19-20.

Court Ok. So, you wouldn't say that it's not possible for him to form the intention, but you're saying that in your opinion, he did not have the intention?

Witness He did not have the intention.

Court Would that be a fair summary?

Witness Yes, Your Honour.

231 Dr Rajesh subsequently confirmed that the Accused's lack of capacity to form intent was not linked to his diagnosis of moderate depression.³⁷³ He further clarified that when he said that "[the Accused's] depression also significantly contributed to the offence..." in Dr Rajesh's 1st Report (at paragraph 26), it was not about capacity to form intent.³⁷⁴

232 In any event, I accept Dr Phang's evidence that the Accused was not suffering from moderate depression (which I take to be synonymous with a moderate depressive episode) at the material time. Even if the Accused had suffered from low moods between June and December 2003 as a result of his relationship problems with the Victim, that was no more than the ordinary vicissitudes of life and did not amount to a clinically diagnosed mental condition.

233 First, a diagnosis of moderate depression of the Accused at and before the material time of the alleged offence does not comport with third party observations of the Accused in 2013.

234 According to Dr Phang, a clinically depressed individual suffers from impaired functionality and could not possibly have performed at the level of the Accused at work, particularly given the high pressure environment like the ICU

³⁷³ NE Day 15, p 2, lines 18-22.

³⁷⁴ NE Day 14, p 21, lines 11-18.

where the Accused worked.³⁷⁵ Yet, based on the testimony of Ms Wong, who was the manager of the facilities services for which the Accused had worked for around 1 year before the date of the alleged offence, and whom Dr Phang interviewed on 17 February 2014, the Accused had been of good character with “more than satisfactory” work performance (see [229] above).³⁷⁶ Ms Wong further testified that the nurses and nurse manager at the ward in which the Accused worked were “quite happy with his work”.³⁷⁷

235 In response, Dr Rajesh did not seriously dispute that moderate depression would, as a general proposition, affect the functionality of an individual, but opined that the Accused’s good work performance did not mean that he did not have depression. First, even though he had the title of healthcare assistant, his actual duties were mechanical, repetitive, and unskilled, such as cleaning the floor, making the bed, and serving food. Depression affects cognitive functions such as memory, concentration, rational decision-making, and not the performance of manual or unskilled work. Dr Rajesh gave an example of security guards, some of whom apparently have mental disorders but are still able to do their work as security guards because it does not involve higher thinking.³⁷⁸ Further, there are situations of “smiling depression” or “masked depression” where severe depression is not picked up or diagnosed, and suicide is the ultimate end.³⁷⁹ Thirdly, the Accused’s work performance may not be satisfactory as Ms Wong made it out to appear. In this regard, the Defence pointed to the statement of Mr Gandhi, the Accused’s direct supervisor for the

³⁷⁵ Exhibit D2, para 3; NE Day 4, p 26, lines 21-32.

³⁷⁶ Exhibit P65, para 11.

³⁷⁷ NE Day 7, p 24, lines 19-22.

³⁷⁸ NE Day 13, pp 31-32; NE Day 15, p 21.

³⁷⁹ NE Day 13, pp 31-32.

same period (and who reported to Ms Wong as well), which stated that the Accused work performance was “acceptable” but he was “not serious with his work”.

236 With respect, I do not agree with Dr Rajesh on this point. While I see some force in his reasoning, the fact of the matter is that both Mr Gandhi and Ms Wong agree that the Accused had been of at least acceptable performance at work.³⁸⁰ Mr Gandhi’s comment that the Accused was “not serious with his work” was made in the context of his observation that the Accused “often report[ed] late and t[ook] unnecessary breaks”.³⁸¹ Further, Mr Gandhi’s evidence was that the Accused was visiting his friends at other wards when he should have been working. I accept Dr Phang’s testimony that this indicated that the Accused was sociable and socialising, which would be at variance with the diagnosis of moderate depression since a genuinely depressed person will keep to himself and lose interest in usually pleasurable activities including socialising.³⁸²

237 In any event, Mr Gandhi testified repeatedly that when he said the Accused was “not serious with his work”, he was referring to the period *before* mid-2013.³⁸³ That is inconsistent with Dr Rajesh’s diagnosis of a moderate depression with symptoms manifesting *in and after* June 2013. In fact, Mr Gandhi opined that even though the Accused was playful at the start, he improved in his performance over time with supervision. When asked by the Defence whether the Accused was not performing well nearer to the end of

³⁸⁰ NE Day 10, pp 2-3.

³⁸¹ AB57.

³⁸² NE Day 4, p 66.

³⁸³ NE Day 7, p 13, lines 29-31; NE Day 7, p 14, lines 11-13.

2013, Mr Gandhi unequivocally denied that and stated that the Accused was “still doing the same thing. He was okay.”³⁸⁴

238 Apart from the Accused’s supervisors, the Accused’s mother also allegedly observed his mental condition in 2013. According to Dr Rajesh, the Accused’s mother told him over the phone that she had advised the Accused to see a psychiatrist in India in June 2013, when the Accused was visiting her in India for a short period, as the Accused was having poor sleep and that his mood was sad most of the time (see [163(f)] above).³⁸⁵ Dr Rajesh was of the view that the mother’s information corroborated the Accused’s evidence about his depression. He also pointed out that Dr Phang had not spoken to the Accused’s mother.³⁸⁶

239 I am of the view that not much weight can be placed on the purported observations of the Accused’s mother and the Accused’s information that he had been depressed since June 2013.

240 When the Accused was interviewed by Dr Rajesh, he informed Dr Rajesh that he was depressed over his relationship problems with the Victim since 2013.³⁸⁷ In that month, he returned to India to visit his mother who noticed his depressed mood. She advised him to consult a psychiatrist but because of social stigma in India associated with such a consultation, the Accused decided to see a general medical practitioner instead. The general medical practitioner

³⁸⁴ NE Day 7, p 15, lines 4-6.

³⁸⁵ Exhibit D2, para 8.1.

³⁸⁶ NE Day 15, p 16.

³⁸⁷ Exhibit D2, para 4.

then telephoned a psychiatrist who prescribed 25mg of amitriptyline for the Accused.³⁸⁸

241 Dr Rajesh said he spoke to the Accused's mother over the telephone thereafter. She corroborated what the Accused had said, *ie*, she had noticed that he was depressed and had advised him to consult a psychiatrist.³⁸⁹

242 Significantly, Dr Rajesh said that the Accused's mother had "actually told [the Accused] to see a psychiatrist called Dr Venkatesan".³⁹⁰ Dr Rajesh described Dr Venkatesan as a leading private psychiatrist in India.³⁹¹ The impression that the Court initially got from Dr Rajesh's evidence was that the Accused had consulted Dr Venkatesan through the intermediary of a general medical practitioner in India. Dr Rajesh further testified that he personally knew Dr Venkatesan because they had trained together.³⁹² As Dr Phang pointed out in his rebuttal evidence, if this had been the case, it would be a curious omission for Dr Rajesh not to have contacted Dr Venkatesan directly to find out what exactly he had diagnosed of the Accused and the reasons for his prescribing amitriptyline in June 2013.³⁹³ This led to an interesting assertion made by counsel for the Defence in his application to recall Dr Rajesh as a surrebuttal witness (see [123] above). Counsel said that although the Accused's mother had asked the Accused to see Dr Venkatesan, the general medical practitioner whom the Accused consulted in fact spoke to some other psychiatrist who was not

³⁸⁸ NE Day 13, pp 8-10; NE Day 15, pp 22-23.

³⁸⁹ NE Day 13, pp 12-13.

³⁹⁰ NE Day 15, p 22, lines 21-22.

³⁹¹ NE Day 15, p 22, lines 23-24; NE Day 15, p 24, lines 18-19.

³⁹² NE Day 15, p 22, lines 23-24; NE Day 15, p 24, lines 18-19.

³⁹³ NE Day 15, p 68, lines 29-32.

Dr Venkatesan.³⁹⁴ Counsel initially wanted to recall Dr Rajesh as a witness to provide this clarification, but did not pursue this application.

243 Even if I were to accept that the general medical practitioner did not consult Dr Venkatesan, the point is that Dr Rajesh's initial evidence gave a contrary impression. Indeed, that was the apparent purpose why Dr Rajesh went to some length to elaborate as to who Dr Venkatesan was and his qualifications and acquaintance with Dr Rajesh. If the Accused had been recommended to consult Dr Venkatesan but did not do so, whether directly or indirectly, then there would have been no reason to elaborate about Dr Venkatesan. It was incumbent on Dr Rajesh to make it clear that Dr Venkatesan was never consulted either directly or indirectly when he mentioned Dr Venkatesan's name. The fact that Dr Rajesh did not make that clear, and instead elaborated about Dr Venkatesan and his background, raised a question about the reliability of his expert evidence.

244 Alternatively, if in fact the general medical practitioner did consult Dr Venkatesan, but Dr Rajesh omitted to contact Dr Venkatesan directly to find out what he had diagnosed of the Accused, then the allegation that the Accused was diagnosed by a psychiatrist to be depressed would have been suspect.

245 Secondly, the Accused's mother was illiterate. Dr Rajesh himself said that she might not be able to explain what "depression" meant.³⁹⁵ Yet, it was alleged that she was able to suggest to the Accused to consult a psychiatrist by the name of Dr Venkatesan. It appears that Dr Rajesh did not question how the mother knew enough to make the recommendation. Two other points are of note

³⁹⁴ NE Day 15, p 73.

³⁹⁵ NE Day 15, p 18, lines 24-25.

here. One, the mother was not independent and she would have been inclined to say to Dr Rajesh whatever that is protective of her son.³⁹⁶ Two, she was not called to give evidence. Her information was therefore not subject to the test of cross-examination.

246 Thirdly, when Dr Phang interviewed the Accused, Dr Phang explicitly asked the Accused whether he had ever consulted a psychiatrist. This was because the Accused had informed Dr Phang that he had consulted a doctor when he was in India in June 2013 and was prescribed amitriptyline by the doctor. The Accused's answer to Dr Phang's question was that he had not.³⁹⁷ The Accused also denied having any history of psychiatric illness.³⁹⁸ The Accused mentioned his mother's alleged recommendation and how he had indirectly consulted a psychiatrist while in India only when he was interviewed by Dr Rajesh much later. I am of the view that if this additional information was true, the Accused would have mentioned it to Dr Phang in response to Dr Phang's explicit question as to whether he had consulted a psychiatrist. His omission suggested that the additional information given subsequently to Dr Rajesh was an untrue embellishment.

247 In the circumstances, I am of the view that the supervisors' observation of the Accused's behaviour would be more reliable. As Dr Phang also explained, their proximity with the Accused on a day to day basis would give "a far more acute reflection of [the Accused's] mental state" than the Accused's mother in India with whom the Accused met only for a short period in June 2013.³⁹⁹

³⁹⁶ NE Day 15, p 67, lines 19-31.

³⁹⁷ NE Day 4, p 58, lines 2-12.

³⁹⁸ NE Day 4, p 58, lines 9-10.

248 Another reason why I am not persuaded by Dr Rajesh’s opinion about the Accused’s moderate depression is that I am of the view that Dr Rajesh had placed undue weight on the fact that amitriptyline (also known as “Elavil”)⁴⁰⁰ had been prescribed for the Accused allegedly by the psychiatrist.

249 At the outset, I note that the purportedly prescribed amitriptyline (or any other depressants or medication) was not actually produced in Court. However, as this prescription was not disputed by the Prosecution, I assume for present purposes that the Accused had in fact been prescribed such medication perhaps by the general medical practitioner if not by a psychiatrist.

250 In his 1st Report, Dr Rajesh described the prescription in the same paragraph as his diagnosis of the Accused’s moderate depressive episode. It appears that based on this prescription, Dr Rajesh presumed that the “doctor in India... diagnosed [the Accused] to have depression in June 2013”.⁴⁰¹ In the course of the trial, questions arose as to why the Indian psychiatrist prescribed only 25mg of amitriptyline. Dr Phang testified that this dosage was too low to indicate a diagnosis of clinical depression, and so the medication may have been prescribed for insomnia instead. Dr Rajesh explained that prescribing a low dosage of amitriptyline is professional clinical practice, because amitriptyline is a “very old antidepressant” and has several side effects, so no psychiatrist will prescribe a high dosage from the start. However, Dr Rajesh did not say that the dosage of amitriptyline prescribed should not be considered “low”, or that it could not have been given as treatment for insomnia.

³⁹⁹ NE Day 15, p 70, lines 13-27.

⁴⁰⁰ Exhibit P66 at para 5; NE Day 15, p 24, lines 25-26.

⁴⁰¹ Exhibit D2 at para 22.

251 In the absence of further evidence from the doctor who prescribed the medicine, the bare fact that amitriptyline of a low dosage was prescribed for the Accused is neither here nor there. In fact, Dr Rajesh himself stated that amitriptyline was not a medication used exclusively for clinical depression; it can also be used for migraines and irritable bowel syndromes.⁴⁰² Dr Rajesh's reliance on the prescription of amitriptyline in support of his diagnosis of moderate depression was therefore erroneous.

252 For the foregoing reasons, I accept Dr Phang's opinion that the Accused did not suffer from clinical moderate depression at the material time of the alleged offence.

Alcohol intoxication

253 The third mental condition of concern is that of alcohol intoxication.

(1) Dr Rajesh's evidence

254 In Dr Rajesh's 1st Report, he produced a table indicating the stage of alcoholic influence, and the clinical signs and symptoms at various blood alcohol concentration levels. Based on his estimation, the Accused drank 17 cans of beer, and each can of beer contains 15 mg of alcohol. The Accused thus had a blood alcohol concentration level of 0.25g/100ml. At that level, the Accused was in the "excitement" stage of alcoholic influence, with symptoms being "[e]motional instability, loss of critical judgment, impairment of perception, memory, and comprehension. Decreased sensory response, increased reaction time. Reduced visual acuity, peripheral vision and glare recovery. Sensory-motor incoordination, impaired balance, and drowsiness."⁴⁰³

⁴⁰² NE Day 15, p 24, lines 27-32.

255 However, Dr Rajesh opined that the Accused's capacity to form intent was not linked to his intoxication because the intoxication was voluntary. The Prosecution appeared satisfied to proceed on this basis.⁴⁰⁴ However, he added that the Accused's alcohol intoxication led to impulsive and disinhibited behaviour without thinking of the consequences.⁴⁰⁵

(2) Dr Phang's evidence

256 Dr Phang opined that the Accused was suffering from "concomitant alcohol abuse" even though this did not negate his ability to be cognisant of his actions at the material time nor his ability to differentiate between right and wrong. This was because the Accused remained able to recall exactly how many and which type of beer he had consumed, the times and the shop from which he had purchased the beer (see [157(e)] above).⁴⁰⁶ Further, apparently, the Accused explained that even though he had consumed alcohol, he was aware of what was happening around him other than the fact that he had a severe headache.⁴⁰⁷

(3) My assessment

257 Dr Rajesh's and Dr Phang's opinions *vis-à-vis* the Accused's alcohol intoxication and his capacity to form intention did not materially differ. In essence, they both agree the Accused's capacity to form intent was not deprived by his alcohol intoxication, even though the Accused was to some extent intoxicated (in the layperson's sense of the word) at the material time.

⁴⁰³ Exhibit D2, Annex A; NE day 13, p 28, lines 21-29.

⁴⁰⁴ NE Day 15, p 2, lines 18-22; NE Day 14, p 17, lines 21-23.

⁴⁰⁵ NE Day 14, p17, lines 11-20.

⁴⁰⁶ NE Day 4, pp 20-21.

⁴⁰⁷ NE Day 3, p 118, lines 29-32.

258 I note that Dr Rajesh may have been mistaken in his reasoning insofar as he took into consideration the voluntariness of the intoxication. Whether the intoxication was voluntary may be relevant in determining whether the general exception under s 85(2)(a) of the PC is established. However, insofar as the issue is whether an intoxicated person could form intent to satisfy the offence charged, that would be an issue of the extent of intoxication and its effect on the particular accused person, rather than whether the accused person had voluntarily or involuntarily consumed such intoxicating substance.

259 In any event, if there is any doubt about whether Dr Rajesh and Dr Phang have indeed taken reconcilable positions *vis-à-vis* the effect of alcohol intoxication on the Accused, I accept Dr Phang's opinion that the Accused was not so intoxicated at the material time as to have lost his capacity to form intent.

260 First, the contemporaneous facts strongly suggest that the Accused was not so intoxicated as to have lost control of his mental faculties on the morning of 20 December 2013. At [205] and [206] above, I have stated certain facts which demonstrate the Accused's presence of mind around the time of the alleged offence. In addition, when called by his supervisor Mr Gandhi, the Accused could comprehend what was said, respond, and proffer a reason as to why he had not turned up for work that morning. Notably, when this was pointed out to Dr Rajesh, he agreed that this suggested that the Accused was able to function and think.⁴⁰⁸

261 Secondly, it appears that Dr Rajesh's assessment of the Accused's state of intoxication was based on an erroneously inflated number of cans of beer

⁴⁰⁸ NE Day 15, p 38, lines 1-9.

consumed by the Accused from around the evening of 19 December 2013 to the time of the alleged offence.

262 In the 2nd Statement (recorded on 20 December 2013 at 9.25pm), the Accused enumerated that he had consumed 9 cans of beer. This was between the time he had returned to the vicinity of his residence on 19 December 2013, fell asleep, woke up, hid the knife inside his socks, went back to the vicinity of the Block, fell asleep again, woke up, and saw the Victim in the morning of 20 December 2013 (“the Relevant Period”).

263 About 5 to 6 weeks later, in his interviews with Dr Phang in late January and early February 2014, he enumerated to Dr Phang that he had consumed 7 cans of beer during the Relevant Period.⁴⁰⁹

264 When the Accused came to be interviewed by Dr Rajesh for the first time in late October and early November 2015, almost 2 years after the alleged offence, he informed Dr Rajesh that he had consumed around 10 to 11 cans of beer up to the time he fell asleep at the vicinity of the block and drank more cans of beer when he woke up.⁴¹⁰ Dr Rajesh mentioned 17 cans of beer in paragraph 22 of his 1st Report when he was estimating the Accused’s blood alcohol level at the material time just before the assault.⁴¹¹ However, in oral evidence, Dr Rajesh first mentioned “up to about 15 cans of beer”,⁴¹² and then noted that his report recorded 17 cans of beer.⁴¹³ Dr Rajesh did not elaborate as to how he had come to mention either figure or how he had derived them.

⁴⁰⁹ NE Day 4, p 22.

⁴¹⁰ Exhibit D2 at paras 16 and 17.

⁴¹¹ Exhibit D2 at para 22.

⁴¹² NE Day 13, pp 27-28.

⁴¹³ NE Day 13, p 28.

265 I am of the view that the 2nd Statement and the information given by the Accused to Dr Phang would be more reliable as such information was provided more contemporaneously. The information from these sources was that the Accused had consumed 7 to 9 cans of beer during the Relevant Period. On the assumption that the Accused had consumed 9 cans of beer, and that each can of beer has about 15mg of alcohol (which was the unchallenged assumption used by Dr Rajesh), that would give around 135mg of alcohol which was only about half the blood alcohol concentration that Dr Rajesh has calculated using his estimate of 17 cans of beer consumed.⁴¹⁴ There was no suggestion by either expert that a person who had a blood alcohol concentration level of 135mg/dl would be deprived of the capacity to form intent.

266 For the foregoing reasons, I accept Dr Phang's evidence that the Accused suffered from no major psychiatric condition at the material time of the alleged offence and therefore possessed the capacity to form intent as required for the Charge.

Did the Accused in fact form an intention to kill the Victim at the material time?

267 Having found that the Accused had the capacity to form intent at the material time of the alleged offence, the next issue is whether the Accused had at that time satisfied one of the limbs of *mens rea* under s 307 of the PC.

Witnesses' testimonies

268 In my view, the Accused's intention to kill the Victim at the material time is demonstrated by aspects of the evidence given by the Victim, Hanif, and the police officer SSGT Khairul.

⁴¹⁴ NE Day 15, pp 36-37.

(1) Victim

269 Based on the Victim's account of the incident, as the Accused was stabbing her, he shouted "saavudi" in Tamil, which meant "die" (see [41] above). The Accused also said in Tamil "If I can't have you, no man should have you" (see [41] above).⁴¹⁵ The Victim was questioned about the former statement but not the latter. She maintained her evidence on the former statement.⁴¹⁶

270 In cross-examination, the Prosecution put it to the Accused that whilst he was attacking the Victim, he had shouted "saavudi", and that he had told the Victim that if he could not have her, no one else could have her. The Accused's responses to both questions were that he did not know.⁴¹⁷ Instead, the Accused provided an account involving the Victim bleeding from her face, her kissing the Accused, and the Accused laying her gently down onto the ground (see [50] above).⁴¹⁸ The last allegation is inconsistent with the evidence of other witnesses which I accept (see [54]-[56] above). It is also not believable that the Victim was kissing the Accused who was still attacking her. In any event, the Accused's evidence was that he could not recall what had happened during the material period when he stabbed the Victim.

271 Further, I do not accept the Defence's submission that the Victim lacked general credibility. In their closing submissions, the Defence referred to the Victim's apparent concession that some of what she had said in her conditioned statement was not true:

⁴¹⁵ NE Day 5, p 23, lines 12-32; p 24, line 1.

⁴¹⁶ NE Day 6, p 61.

⁴¹⁷ NE Day 12, p 41, lines 7-15.

⁴¹⁸ NE Day 12, p 43, lines 8-14.

DC Witness, what --- sorry. What you have stated that --- in your conditioned statement that the accused was kept ha--- sorry, "the accused kept harassing me and told me that he like me" is not true"

A Yah, it's not true.

DC Okay.

A He --- mmm.

DC [...]

Court I think you also have to be careful, you know, counsel because there are two limbs in that sentence. We don't lump it together unnecessarily. Harassing her is one thing. Telling her that she likes ---

DC Yes, Your Honour

Court --- that he likes her, you mean your client ---

DC So a ---

Court --- is going to deny that?

DC Then I'll rephrase it.

That what you said he was harassing is not true, right?

A Yah.

DC Thank you. But it is true that he liked you?

A Yes.

272 I accept that the Victim was not entirely forthcoming about certain details of her interactions and relationship with the Accused. I note further that the Victim may have sought to avoid questions concerning the true nature of her relationship with C. For instance, when asked about the nature of the relationship between her and C in cross-examination, the Victim appeared reluctant to answer the question and said "I don't feel that, you know, what I had with other people is relevant. It's what I had with the accused is more relevant, right?"⁴¹⁹

⁴¹⁹ NE Day 6, p 40, lines 1-8.

273 However, in my view, this does not indicate that the Victim lacked credibility generally, or that she was not credible in relation to her account of the incident. As the Victim explained, she was not proud of the fact that she had played around with the Accused in 2013. She had acted out of immaturity and she now acknowledges that that was a mistake.⁴²⁰ This could explain the Victim's apparent evasiveness on questions that related to her relationship with the Accused, C. The topic on which the Victim was apparently evasive is restricted to her relationships with each of these persons, and did not relate to her account of what had happened on 20 December 2013.

274 Finally, I note that there was an inconsistency in the Victim's recount of the incident on 20 December 2013. In her conditioned statement, the Victim said that she was texting on her handphone when she exited the lift of her Block.⁴²¹ On the other hand, she testified in Court that she was only listening to music.⁴²² In my view, the inconsistency is not material in all the circumstances. Indeed, the inconsistency was not raised by the Defence in cross-examination or in submissions. I mention it only for completeness as it pertains to the incident on 20 December 2013.

(2) Hanif

275 The Prosecution sought to rely on the evidence of a witness, Hanif, whose evidence I have detailed above at [55]. In essence, Hanif stated that soon after the incident, the Accused admitted to him, after he approached the Accused and asked what had happened, that the Accused had slashed an Indian girl because she had cheated on and rejected the Accused on a number of

⁴²⁰ NE Day 6, p 26, lines 15-21.

⁴²¹ AB40.

⁴²² NE Day 6, p 57.

occasions.⁴²³ Unfortunately, Hanif passed away before the trial and was unable to testify. His conditioned statement was admitted under s 32(1)(j)(i) of the EA without objection from the Defence.⁴²⁴

276 I agree that the fact that the Accused's first instinct was to attempt to justify his conduct to Hanif by reference to the Victim's purported infidelity, rather than to mention the wallpaper or to say that he did not know what he was doing, suggests that the Accused had acted with awareness of his circumstances and control of his conduct at the material time.

(3) SI Irwan and SSGT Khairul

277 The Prosecution also sought to rely on the evidence of SI Irwan and SSGT Khairul to show that the Accused had the intention to kill the victim because she had cheated on him.⁴²⁵

(a) SSGT Khairul stated in his conditioned statement that the Accused said that he had brought the knife to the Block as he wanted to kill the Victim because she cheated on him, and that he had intended thereafter to kill himself as the Victim was his life (see [59] above).⁴²⁶

(b) SI Irwan's evidence was that when he had asked the Accused what had happened, the Accused said "to the effect, in broken English, that he had stabbed a woman with a knife... [because] the woman had betrayed him and so she must die."⁴²⁷ (see [60] above).

⁴²³ AB52.

⁴²⁴ NE Day 6, pp 66-67.

⁴²⁵ Prosecution's Closing Submissions at para 75.

⁴²⁶ AB63.

⁴²⁷ AB69; NE Day 2, p 4.

278 The Accused denied telling SI Irwan that the Victim must die because the Accused could not marry her. SI Irwan accepted that he did not write down immediately what the Accused had allegedly told him. He recounted what the Accused had told him to the investigating officer about a week later.⁴²⁸ In view of the lapse of time, I do not place any weight on SI Irwan's evidence on this point.

279 On the other hand, the Accused did not question the evidence of SSGT Khairul whose conditioned statement was admitted without cross-examination by the Defence. While it is not entirely clear whether SI Irwan was referring to the same interview as the one which SSGT Khairul was referring to, SSGT Khairul's statement as to what the Accused had said was not questioned, as I have mentioned. I therefore accept his statement as correctly recording what the Accused had informed him, and thus evidence that the Accused intended to kill the Victim at the material time. As I will discuss below (see [299]-[300]), an intention to kill the Victim and then commit suicide nevertheless amounts to an intention to kill the Victim within the meaning of s 300(a), and consequently satisfies the *mens rea* requirement under s 307 of the PC.

The Accused's statements to the police

280 The Prosecution also relied on the Accused's various statements to the police which the Prosecution submitted were accurately recorded when the Accused had the requisite presence of mind.⁴²⁹ I am of the view that the probative value of these statements was not affected by the fact that they referred to a charge under s 326 of the PC Rather than under s 307 of the PC.⁴³⁰

⁴²⁸ NE Day 2, pp 7-8.

⁴²⁹ Prosecution's Closing Submissions at paras 77-95.

There was no challenge as to the admissibility or voluntariness of these statements.

281 In my view, the Accused's 1st to 4th Statements reinforce the Prosecution's case that the Accused had the intention to kill the Victim at the material time.

(a) The 1st Statement was recorded soon after the alleged offence and stated that "I want to kill her and kill me. I stab my wife because she cheating on me. She cheat me many times. I am upset and angry" (see [66] above). Here, the Accused expressly admitted to an intention to kill the Victim, and his attempt to justify his conduct by reference to the Victim's infidelity suggests that he had attacked the Victim with deliberateness and consciousness rather than as a result of dissociation or loss of control or awareness.

(b) The 2nd Statement expressly conceded an intention to kill the Victim. Question 1 to the statement asked "Did you have the intention to kill [the Victim]?", to which the Accused responded "Yes I want to kill her and after that I will kill myself, because she cheat me and at the same time, she is my life..." (see [70] above). Question 2 followed up with "Are you telling the truth?" to which the Accused responded "Yes". Thus, even if Question 1 was a reference to what the Accused had earlier stated in his 1st Statement, the Accused's response to Question 2 constituted a fresh admission of his intention to kill. There was a reference to the Victim's handphone as containing evidence of the

⁴³⁰ Prosecution's Closing Submissions at paras 96-99.

Victim's infidelity, but no specific reference to the wallpaper. I will say more on this later.

(c) The 3rd Statement stated that "Because she cheat me sir, she play with my feelings, sir..." (see [73] above). The Accused did not say that he did not know why or how he had attacked the Victim, or that he had lost awareness or control of himself. There is also no mention of the Victim's wallpaper. This suggests that the Accused had in fact formed the intention to kill the Victim, albeit he was trying to justify his conduct *ex post*.

(d) The 4th Statement expressly conceded to an intention to kill the Victim. It was also the first mention of the Victim's wallpaper: "My first intention is to go and find her and to kill myself but after I see the picture on her handphone, I then want to kill her and after that kill myself" (see [77] above).

282 The statements do mention the Accused's concurrent intention to commit suicide. However, as I discuss below, even if that is taken at face value, an intention to commit suicide is not inconsistent with an intention to kill the Victim.

283 Further, I note that the 5th Statement denied an intention to kill the Victim, but this was an outlier and it was taken in 2015, which was around two years after the date of the 4th Statement.

284 The Accused explained that he had given the 1st to 4th Statements because he was confused and did not want to live. I do not accept this excuse. The implication that the Accused intended to kill the Victim because she had

been cheating on him is clear and consistent throughout the 1st to 4th Statements. Further, the 2nd and the 4th Statements were fairly detailed and did not suggest any deficiency in the Accused's ability to think, recollect, or respond. It was also Dr Rajesh's evidence that by 9.25 pm on 20 December 2013 which was the time the 2nd Statement was taken, the Accused's blood alcohol concentration level would have been zero.⁴³¹

The number and nature of injuries

285 The Prosecution's closing submissions helpfully tabulated the Victim's injuries as gleaned from the NUH Medical Report as follows:⁴³²

Region	Injury
Head and neck	• 2cm wound at the right supra-clavicular region • 10cm wound at the right neck • 2.5cm wound at left neck with ear lobe and inferior ear incised • 3cm wound at the chin • 4cm wound at the right base of neck • 3cm wound at left neck trapezium region with a separate 2cm wound parallel and a 2cm wound perpendicular to it
Chest and abdomen	• 3cm wound at the right upper abdomen • 2 separate wounds – 3cm and 1cm at the right upper chest • Wound at the left lumbar L3 region with hematoma • Wound at the right scapular region

⁴³¹ NE Day 13, p 63, lines 12-25.

⁴³² Prosecution's Closing Submissions at para 25.

Right upper limb	• 3 parallel wounds at the right shoulder (9cm, 3cm, and 5cm) • 3cm wound at the right biceps region
Left upper limb	• 3 parallel wounds at the left shoulder (3cm, 6cm, and 3cm) • 6cm wound at the left posterior deltoid region • 5cm wound at the left bicep region • 2 parallel T shaped lesion at the left biceps (4cm and 3cm) • 3cm open wound at the left dorsal wrist • 3cm open wound at the dorsum 3rd finger metacarpophalangeal joint • 3cm wound at the left hypothenar eminence • Wound at the base of the thumb
Right lower limb	• 2 separate wounds on the right hip (8cm at the right lateral hip and 8cm L-shaped wound at the right hip)

286 At the outset, I return to the issue of the Accused's capacity to form intention. In my view, the nature of the Victim's injuries and the manner of the Accused's attack do not necessarily support the proposition that the Accused was deprived of capacity to form intent at the material time. In this regard, the Defence cited the Court of Appeal's decision in *Pathip*, where the Court had observed in relation to the partial defence of provocation (at [41]):

41 The fact that multiple injuries were inflicted in an entirely random and frenzied manner all over the deceased's body also suggests that the accused had suddenly lost self-control. As mentioned earlier (see [26] above), there were 15 external injuries over various parts of her body. In his statement to the police dated 14 July 2008, the accused stated thus:

After the first stab, I closed my eyes and I started to swing and stab her several times. I do not know how

many times I did this. I could not remember clearly what I had done. My mind went blank at that moment. At times, I could feel that the knife I was holding hit onto something but at times, I felt that I was swinging my hand in the air.

287 Presumably, the Defence's point was that the number and nature of the injuries in our case, analogous to that in *Pathip*, suggested that the Accused lacked capacity to form intention. I do not agree. In my view, there is no general proposition that the infliction of multiple injuries in an apparently random and frenzied manner would mean that the accused lacked of self-control or capacity to form intent. Much would depend on the particular facts. The infliction of multiple, random, and frenzied injuries could be evidence of the senseless conduct of an accused who has lost all self-control, or it could be equally consistent with the result of an attack by an accused who had, with consciousness and control over his mental faculties, engaged in a struggle or scuffle with the victim in his bid to kill that victim (see also *Public Prosecutor v Sundarti Supriyanto* [2004] 4 SLR 622 at [152]). Therefore, *Pathip* is better construed as a context-specific example, rather than a general proposition that accused persons who inflict multiple, random, and frenzied injuries lack self-control or capacity to form intention.

288 In the present case, the nature of the injuries sustained by the Victim could be explained by reasons other than the Accused's loss of capacity to form intent. For one, it was undisputed that the Victim had struggled with the Accused at the material time of the incident in a natural bid to protect herself from further injury. The effect of her struggle could make the injuries she suffered appear to be inflicted in a frenzied manner.

289 I have set out above my reasons for concluding that the Accused had the capacity to form intent at the material time and that he did in fact have that intent. In addition, I am of the view the number and nature of the injuries, as well as the manner of the Accused's attack on the Victim, reinforces my view that the Accused intended at the material time to kill the Victim.

290 Looking at the injuries suffered by the Victim (see [285] above), the Accused had struck repeatedly, relentlessly, and forcefully at several parts of the Victim's body, including her head and neck region which are vulnerable. The Accused initiated his attack against the Victim while she was standing, and continued to strike at her even after she had fallen to the ground. By the Accused's own account, he must have used significant force as he had caused the tip of the knife blade to bend when he missed a strike and the knife hit the floor. Even until the Victim's father came to the Victim's aid at the scene, the Accused was positioned on top of the Victim with a knife and was about to strike at the Victim.⁴³³ According to the father's testimony, the Accused only stopped his assault when the father pushed him, causing him to drop the knife and flee the scene.⁴³⁴

291 The circumstances of the Accused's attack on the Victim make it unequivocally clear that the Accused did have the requisite intention to kill the Victim at the material time of the alleged offence. Having found that the Accused was not suffering from any mental condition at that time which deprived him of his capacity to form intent, there is no other plausible explanation for the Accused's conduct: the irresistible inference is that he must have intended to kill the Victim. This state of *mens rea* would correspond with

⁴³³ NE Day 1, p 66, lines 1-6.

⁴³⁴ NE Day 1, p 37, lines 23-30.

that under s 300(a) of the PC, thereby satisfying the *mens rea* requirement under s 307 of the PC.

The Accused's motive

292 The Prosecution submitted that the Accused's own testimony was illogical and fraught with inconsistencies.⁴³⁵ They argued that the Accused was not truthful about the emotions that he held towards the Victim at or around the time of the offence in late 2013. By the Prosecution's case, the Accused was "aggrieved" by the Victim's perceived infidelity and was "upset at the victim" after having been repeatedly rebuffed in his marriage proposals. Further, the Accused was not truthful when he testified that he had gone to find the Victim at the Block on 19 December 2013 with the intention to commit suicide before her.

293 Motive is not an element of the offence but can bolster the inference that an intention to commit the offence was existent (*Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [58]). In my view, the Accused was, in December 2013, angry with the Victim for her perceived infidelity and for cheating on him, even though the Accused had vacillated in Court on this point (see [24] above).

294 First, text messages between the Accused and the Victim clearly show some degree anger on the part of the Accused towards the Victim in mid- to end-November 2013. Evidence was adduced of the Accused's messages to the Victim, showing variously that "... I want want u back..." and that "U are the cheating girl", "U cheat my money".⁴³⁶ On 17 November 2013, the Accused also

⁴³⁵ Prosecution's Closing Submissions at paras 109-125.

⁴³⁶ AB227, S/N 24, 25, 27.

messed the Victim “Now u going to sofer”.⁴³⁷ There was nothing to suggest that the relationship between the Accused and the Victim, or the Accused’s emotions towards the Victim, had significantly improved between those messages and the time of the alleged offence.

295 Further, I also find that the Accused was evasive in his replies in cross-examination to certain questions regarding whether he had felt simmering anger against the Victim for purportedly cheating on him. For instance, the Accused claimed in Court to have forgotten why he had stated in his 3rd Statement that the Victim “play with my feelings”.⁴³⁸

296 There may be some genuine difficulty in precisely expressing one’s emotional responses even in retrospect. As the Accused explained, “[c]ertain things can only be felt, it cannot be put in words”.⁴³⁹ However, the Accused’s replies when pressed on this issue during cross-examination was not so much concerned with difficulties of expression as it was with failed memory. It was not plausible that the Accused had forgotten such a strong emotion regarding the Victim’s purported cheating on him, a point which he had repeated in Court and in several statements.

The Accused’s suicidal intentions

297 The Defence’s case was that up to the time the Accused beheld the Victim’s wallpaper depicting the Victim in an embrace with K, the Accused’s intention had been to commit suicide before the Victim. In this regard, the Defence submitted that the Accused had declared his intention to commit

⁴³⁷ AB227, S/N 20.

⁴³⁸ NE Day 12, p 34 and p 35, lines 1-3.

⁴³⁹ NE Day 12, p 34, lines 30-31.

suicide between 19 and 20 December 2013 no less than three times: (a) in response to K's utterances on 19 December 2013; (b) when he called his mother in India to inform her that this would be their last call; and (c) on 20 December 2013 just before the attack on the Victim.⁴⁴⁰

298 There is no need for me to make a finding as to whether the Accused had harboured an intention to commit suicide. I note that none of the Accused's alleged expressions of his intention to commit suicide has been corroborated.

299 Even if the Accused did intend to commit suicide, that is not inconsistent with a concurrent intention to kill the Victim. As the Prosecution noted, the Accused's intention to kill himself after killing the Victim would nevertheless be "quintessentially an instance of murder under s 300(a)" since there was no way for the Accused to end their lives together without first carrying out his stated intention to kill the Victim (see *Muhammad bin Kadar v Public Prosecutor* [2014] SGCA 48 at [39]).⁴⁴¹

300 Further, even if the Accused had harboured an intention to commit suicide from 19 December 2013, he could have formed the requisite intention to kill the Victim on 20 December 2013 immediately prior to his attack on the Victim. In this regard, it is trite law that intention can be formed on the spur of the moment just before the actual attack takes place, and does not have to be pre-planned or premeditated. This is so in relation to a murder charge under s 300(a) of the PC (*Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 at [34]), and a culpable homicide charge under s 299 of the

⁴⁴⁰ Defence's Closing Submissions at para 7.1.

⁴⁴¹ Prosecution's Closing Submissions at para 73.

PC (*Public Prosecutor v P Mageswaran* [2017] SGHC 307), and I see no reason why it should not also apply to s 307 of the PC.

Alternative mens rea

301 For completeness, I add that even if I am wrong on the Accused's intention to kill the Victim, based on the nature and number of the Victim's injuries and the manner of the Accused's attack, I would have found that the Accused had at the material time the intention to cause such bodily injury as he knows to be likely to cause the death of the Victim, and the knowledge that his actions were so imminently dangerous that it must in all probability cause the Victim's death.⁴⁴²

Actus reus of the offence

302 As I mentioned, the Accused had struck repeatedly, relentlessly, and forcefully at several parts of the Victim's body, including her head and neck region, which are vulnerable, and had continued to strike at her even after she had fallen to the ground. The Accused used such significant force as to cause the tip of the knife blade to bend when he missed a strike and the knife hit the floor. The Accused did not stop striking at the Victim until the Victim's father arrived at the scene and pushed him, causing him to drop the knife and flee the scene.⁴⁴³ Three medical experts testified in Court as to the extent of the Victim's injuries and the medical intervention that these injuries necessitated.⁴⁴⁴

⁴⁴² Prosecution's Closing Submissions at para 108.

⁴⁴³ NE Day 1, p 37, lines 23-30.

⁴⁴⁴ See Prosecution's Closing Submissions at paras 28-30.

303 I have set out the five possible approaches to *actus reus* under s 307 of the PC above. In my view, all of the five approaches are satisfied. It is quite clear that the proximity, substantial step, and embarked on the crime proper tests are satisfied. The apparent intention test, as submitted by the Prosecution, is also satisfied because of the manner in which the Accused had attacked the Victim. Further, the last act test is satisfied because the Accused had done all the acts which he believed necessary to commit murder. On the facts, all indications suggest that the Accused would have continued to strike at the Victim if the Victim's father had not intervened. Even taking the Victim's injuries as they stand, Dr Thomas Loh, the specialist involved in the management of the wounds on the Victim's head and neck, testified that without medical intervention in the form of haemostasis and ligation, the Accused would have continued to bleed and eventually go into a haemorrhagic shock which would be life-threatening.⁴⁴⁵

Whether the partial defence of provocation is made out

304 Usually, provocation is invoked as a partial defence to murder as contained in Exception 1 to s 300 of the PC. If successfully established, it reduces a charge of murder to one of culpable homicide not amounting to murder.

305 In the present case, if the partial defence of provocation is established, the charge of attempted murder under s 307 of the PC will be reduced to a charge for attempted culpable homicide under s 308 of the PC. The applicability of the partial defence of provocation to ss 307 and 308 of the PC is apparent from the language of s 308 and its illustration:

Attempt to commit culpable homicide

⁴⁴⁵ NE Day 1, p 27, lines 8-13.

308. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both; and if hurt is caused to any person by such act, the offender shall be punished with imprisonment for a term which may extend to 15 years, or with fine, or with caning, or with any combination of such punishments.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

306 To establish this defence, the Defence has to prove on a balance of probabilities that (*Pathip* at [34]):

- (a) the Accused was deprived of self-control at material time; and
- (b) the provocation was sufficiently grave and sudden.

307 At the outset, I reiterate that the Defence did not actually raise the partial defence of provocation. Nevertheless, the Prosecution made submissions on the partial defence, and argued that neither the objective nor the subjective requirements of the partial defence was satisfied. The Accused possessed clarity of thought and awareness when he attacked the Victim, and the wallpaper which the Accused saw on the Victim's handphone could not constitute objectively "grave and sudden" provocation.⁴⁴⁶

308 The issue of provocation brings me back to the question of whether the Accused did in fact see the Victim's wallpaper and then lose control of his senses. As mentioned above (see [148], [157(f)] and [163(k)]), the two

⁴⁴⁶ Prosecution's Closing Submissions at paras 163-176.

psychiatrists had assumed that the Accused did in fact see the Victim's wallpaper and, so far, I have proceeded on the same assumption. However, I now examine this assumption.

309 The Accused's post-offence conduct and statements are relevant in this regard. As is evident from the above discussion, the Accused did not initially mention the Victim's wallpaper as the reason for his attack on the Victim, or that he had lost control of his senses for any reason. Instead, he was seeking to provide what he perceived to be a rational reason for his attack which was that she had been unfaithful to him.

310 Thus, the Accused did not mention to Hanif about the alleged wallpaper or that he did not know what was happening at the material time of the alleged offence because he had lost control or awareness of his senses.

311 Further, the Accused did not mention either of these reasons to SI Irwan or SSGT Khairul.

312 He also did not mention either of these reasons in his 1st Statement.

313 In his 2nd Statement, the Accused did say "I then asked her why she cheated me. Both of us then had an argument with each other. I then became angry and lost my control. I then took my knife from my right side leg socks and started to slash her..."⁴⁴⁷ However, there was no mention of the alleged provocative wallpaper. The Accused had apparently gotten angry and lost control because of his argument with the Victim and not the wallpaper. Furthermore, although he mentioned the Victim's handphone, this was in the context of the handphone containing evidence of her infidelity which the

⁴⁴⁷ AB543B.

Accused wanted to show to the police,⁴⁴⁸ rather than the handphone containing the wallpaper and causing him to lose control. Indeed, the reference to the handphone in that statement suggested a rational process going on in his mind as he was trying to gather evidence of her infidelity in order to justify his own attack on her.

314 The 3rd Statement also made no reference to the wallpaper or his loss of self-control.

315 The first time that the Accused mentioned the wallpaper was in his 4th Statement (see [79] above). Even then, the first sentence of the Accused's answer to the 4th question stated that the Accused saw the wallpaper when he had taken the Victim's handphone from her as he held her hand in the morning of the incident. Yet, it was not suggested to the Victim, when she gave her evidence in Court, that the Accused had actually taken her handphone from her before the assault. Indeed, in cross-examination, the Accused denied giving this information in the first sentence.⁴⁴⁹ His oral evidence was that he could not remember what happened after he saw the wallpaper. However, the recording officer was not challenged on the accuracy of the first sentence.

316 In my view, the Accused did provide that information to the recording officer but it was doubtful that he had actually taken the Victim's handphone from her hand before the assault. This was an embellishment of his which cast doubt as to whether he had even seen the wallpaper in the first place.

⁴⁴⁸ AB543C.

⁴⁴⁹ NE Day 9, pp 30-31.

317 The 5th Statement did not mention the wallpaper but it did deny any intention to kill the Victim.

318 Importantly, there was no suggestion from any factual witness, other than the Accused himself, that, after the assault, the Accused appeared lost or confused or that he had expressed surprise or regret on discovering what he had done.

319 While the courts have in some instances declined to place much weight on an accused person's post-offence conduct, I see no reason in the circumstances to adopt such a position. Provocation is a partial statutory defence, and the burden is on the Defence to establish that the Accused did see the wallpaper at the material time and that it caused him to lose control of his senses. For the reasons mentioned, I am not persuaded that the Accused saw the wallpaper at the material time.

320 In any event, the Accused demonstrated such presence of mind around the time of the alleged offence that I also do not accept that he had been subjectively deprived of self-control at the material time. As I mentioned above (eg, at [205], [281] and [313]), he appears to have been sufficiently rational and composed to consider the need and means to convince external parties of the Victim's infidelity in order to justify his own conduct. Indeed, the reference in the Accused's own statement to the fact that he had picked up the Victim's handphone in a bid to gather evidence of her infidelity suggests a rational process going on in his mind. This was contrary to the suggestion that the Victim's wallpaper in her handphone had caused him to subjectively lose control of himself.

321 It is therefore unnecessary to consider the objective requirement pertaining to the partial defence of provocation.

Miscellaneous

The two limbs of s 307 of the PC

322 Section 307(1) of the PC has two limbs (see [124] above). The first limb provides for what may be known as attempted murder simpliciter. If this is proved, the accused “shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine”. The second limb provides for an aggravated form attempted murder: in addition to the elements under the first limb, it must further be shown that “hurt [was] caused to any person by such act”. If this is proved, the accused “shall be liable to either imprisonment for life, or to imprisonment for a term which may extend to 20 years, and shall also be liable to caning or fine”. The salient difference between the two limbs is therefore the sentencing option that is available to the Court upon conviction of the accused.

323 In the present case, the Charge was brought under the second limb of s 307 of the PC (see [1] above). It is undisputed that hurt had been caused to the Victim. The attendant sentencing options following the establishment of the second limb of s 307 thus apply. This will be relevant at the sentencing stage.

Histrionic traits and cultural context

324 In their closing submissions, the Defence relied on a curious line of argument which purportedly buttressed their case that the Accused had decided to commit suicide in the presence of the Victim in order to prove his love for her:⁴⁵⁰

For those who are not familiar with the Indian villagers' thinking, committing suicide in front of a person who has made one's life not worth living is a form of a punishment to that person. Such practice is also popular with script writers for Indian movies. It may not be out of place to mention that watching Tamil movies is the national pass time for most of the Tamils in Tamil Nadu. For an Accused coming from such background, this ridiculous method of punishing the [Victim] is not novel.

325 The Defence cited *Pathip* to support its argument that the Court should be conscience of cultural differences in multi-cultural, multi-religious, and structured society.⁴⁵¹

326 I did not give weight to this line of argument raised by the Defence. If the Defence wanted to adduce evidence regarding the cultural backdrop and regular pastimes in the Accused's hometown, that should be done by way of witness testimony, and not in the closing submissions. This is also not a matter for which judicial notice is warranted. In any event, as the Defence itself acknowledged, the Court of Appeal's comment in *Pathip* was about culture in the context of the legislative history of the PC, and not about any broad proposition that the Court is bound or entitled to accept evidence from the bar as to the kind of "cultural background and thinking" of the Accused.⁴⁵²

327 I note that Dr Rajesh had also opined that the Accused's desire to commit suicide in front of the Victim should be understood in a cultural context. According to Dr Rajesh, the Accused was someone who hails from a rural part of India. It was the first time the Accused has gone to another country for work and a rare occasion for him to interact with the opposite sex. Thus, the dramatic

⁴⁵⁰ Defence's Closing Submissions at para 8.1

⁴⁵¹ Defence's Closing Submissions at para 14.6.

⁴⁵² See Defence's Closing Submissions at para 14.7.

behaviour of cutting himself to prove his love to her is something which can be understood from a cultural perspective, even though a “Singapore Indian” will not do that and not all “India Indians” will do that.⁴⁵³ I hesitate to place weight on this evidence as it did not appear to me to fall within Dr Rajesh’s scope of expertise.

328 For the avoidance of doubt, the Courts are not insensitive to cultural nuance in criminal proceedings. However, if the Defence wishes to place direct reliance on the issue of the Accused’s “cultural background and thinking”, then the onus is on the Defence to bring admissible evidence to support their argument.

Conclusion

329 For the foregoing reasons, I find that the Prosecution has proven its case beyond a reasonable doubt and accordingly convict the Accused on the Charge.

Woo Bih Li
Judge

Bhajanvir Singh, Lim Ai Juan Daphne and Chong Kee En
(Attorney-General’s Chambers) for the Prosecution;
Rengarajoo s/o Rengasamy Balasamy (B Rengarajoo & Associates)
and Tan Heng Khim (Apex Law LLP) for the Accused.

⁴⁵³ NE Day 13, pp 29-30.