IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 6

Criminal Appeal No 41 of 2020

Between

Ahmed Salim

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 29 of 2020

Between

Public Prosecutor

And

Ahmed Salim

JUDGMENT

[Criminal Law] — [Offences] — [Murder] — [Whether intent to kill made out]
[Criminal Law] — [Special exceptions] — [Provocation] — [Whether defence of provocation made out]

[Criminal Law] — [Special exceptions] — [Diminished responsibility] — [Whether diminished responsibility is precluded where offence is premeditated] — [Whether diminished responsibility made out]

Ahmed Salim
v
Public Prosecutor

[2022] SGCA 6

Court of Appeal — Criminal Appeal No 41 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Chao Hick Tin SJ
12 October 2021

19 January 2022

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The appellant, who was suffering from an adjustment disorder ("AD") at the material time, planned the murder of his ex-fiancée, and then carried out his plan. The High Court judge ("the Judge") convicted him of a murder charge under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and sentenced him to the mandatory death penalty. The main point of contention in this appeal is whether he can avail himself of the partial defence of diminished responsibility in circumstances where the murder was premeditated. This gives us the occasion to consider whether the fact that a murder is premeditated precludes an accused person from claiming that partial defence of diminished responsibility is made out. In our judgment, it does not. We are satisfied that

diminished responsibility may be established in certain limited circumstances even where the murder is premeditated. However, we find that the appellant in this case has failed to establish the partial defence of diminished responsibility. He has also failed to rebut any of the elements of the murder charge or to prove any other defence. The appeal is therefore dismissed.

Background facts

2 The material facts were largely undisputed by the parties and were set out in an Agreed Statement of Facts, which the Judge relied on heavily (see *Public Prosecutor v Ahmed Salim* [2021] SGHC 68 ("GD") at [3]–[32]). The key facts were also admitted to by the appellant in his police statements, as well as in what he said to Dr Christopher Cheok Cheng Soon ("Dr Cheok"), an IMH psychiatrist who assessed him in January 2019 and who was called as a witness by the Prosecution. While there was initially some dispute over the accuracy of certain facts recorded in the appellant's police statements, counsel for the appellant, Mr Eugene Thuraisingam ("Mr Thuraisingam"), conceded at the outset of his oral submissions before us that the appellant was no longer contesting the accuracy of the facts recorded in the appellant's police statements. We therefore accept the facts recorded in these statements as true and rely on them in setting out the salient facts, as follows.

3 The appellant and the deceased, one Nurhidayati Bt Wartono Surata ("Yati"), had been in an intimate relationship from around May 2012. In November 2017, they decided to get married. However, sometime in May or June 2018, Yati started seeing someone else. This led to an initial confrontation with the appellant, but the two reconciled after that and continued dating from sometime in July or August 2018. This proved to be short-lived, however, and

by late October or early November 2018, Yati began seeing yet another person, one Hanifa Mohammad Abu ("Hanifa").

4 On 9 December 2018, Yati admitted to the appellant that she had a new boyfriend, referring to Hanifa. The appellant was so upset by this that he decided he would kill Yati. He made plans for this, first by choosing his murder weapon. To this end, he searched for and found a rope with which he planned to strangle Yati to death. He decided on the rope as his potential murder weapon because it was soft and easy to keep hidden in his pocket until it was needed and yet strong enough that he could kill her with it. He also knew that it was against the law to carry sharp weapons in public and so ruled out using a knife, presumably because of the risk of his plan being discovered and derailed. As he often used to take Yati to a hotel when they met, he decided that he would bring the rope with him once he knew that they would be going there. He decided that the hotel would be suitable as the murder location because of the privacy it offered, since it would not be as easy to strangle her in other public locations.

5 The appellant arranged to meet Yati on 23 December 2018. They checked into a room at the Golden Dragon Hotel ("the Hotel"). The appellant had brought the rope with him. Yati lied to the appellant that day that she had not met with Hanifa, and convinced the appellant that she would continue to meet the appellant as they had been doing. The appellant therefore decided not to proceed with his plan to kill her. However, after they parted ways, Yati called the appellant later the same evening and told him that she wanted to end their relationship. The appellant was again very upset by this and decided that he would kill her when they next met. The appellant persuaded her to meet him at the Hotel again on 30 December 2018 and she agreed.

6 On 30 December 2018, the appellant intentionally wore the same clothes he had worn on the previous occasion because he knew the rope was still in his pocket. That morning, he withdrew nearly all the money in his bank account, in order to remit this to his family in Bangladesh.

7 The appellant and Yati later checked into a room at the Hotel. There, he warned her to break off her relationship with Hanifa and threatened to kill her if she did not. He then took a bath towel and circled it around her neck twice in order to frighten her. However, Yati refused to break up with Hanifa and replied that as far as she was concerned, the appellant could kill her. The appellant then "decided to kill her" and tightened the towel. He saw blood flowing out of one of Yati's ears and he realised that Yati would call the police if he let go and she survived. He therefore decided to kill her and pulled the towel even tighter using all his strength, by stepping on one end of the towel and pulling at the other end. Yati initially struggled but slowly lost consciousness and stopped moving. The appellant then removed the towel. However, the appellant heard a sound coming from her mouth and was unsure whether she was still alive. The appellant took the rope that he had brought along and circled it around her neck two to three times, "in order to ensure that she died". He then tightened the rope using strength he described as "7 out of 10" and secured the rope with two or three knots. The appellant noticed that Yati was not moving. However, he continued to hear a very low sound coming from her mouth or nose. In order to "make sure that she was dead", he placed a towel over her face and used his hand to press the towel down around the area of her mouth and nose with all his strength for 10 or 15 seconds. The sound ceased, and the appellant observed that Yati's face had become discoloured. He proceeded to twist Yati's head from the left to right with a force he described as "6 or 7" on a scale of 10, "to ensure that [even] if [a] doctor came, she also would not survive".

8 Shortly after he killed Yati, the appellant took several steps that evidenced his intention and attempt to escape from Singapore. He informed his dormitory mates that he was returning to Bangladesh, left his dormitory, and changed his location multiple times (GD at [146]). He also handed the money which he had withdrawn that morning to a friend, and asked him to help remit the money to the appellant's family in Bangladesh. He avoided the attempts of his supervisor to contact him and instead called a staff member who was not familiar with him and told her that he wanted to cancel his work permit and collect his passport. He even volunteered to pay for his own flight ticket even though this was not the usual practice (GD at [147]). He was eventually apprehended by the police when he showed up at his employer's office to discuss his repatriation arrangements. But even then, he struggled, and force had to be used to effect the arrest (GD at [149]).

High Court proceedings

9 The appellant was charged with murder under s 300(*a*) of the Penal Code. It was not disputed that he had caused Yati's death. The three disputed issues were: (a) whether he had intended to kill Yati ("the first issue"); (b) whether the partial defence of grave and sudden provocation was made out ("the second issue"); and (c) whether the partial defence of diminished responsibility was made out ("the third issue").

10 At trial, the appellant gave a version of events which bore some material differences from what was reflected in his police statements. The appellant testified that in the Hotel room, he initially placed the towel around Yati's neck but did not tighten it. The suggestion was that he intended at this stage to frighten Yati, rather than to kill her. With the towel around Yati's neck, the appellant then tried to persuade her not to speak to Hanifa for a month, at least

until after the appellant had returned to Bangladesh (he had already previously planned to return to Bangladesh in February 2019). At this stage, matters took a critical turn, according to the appellant. Yati allegedly refused and said: "why don't you go to Bangladesh and sleep with your mother. Your mother and me are the same thing, you go and sleep with your mother". She also allegedly said: "Hanif is not like you. He is not stupid like you. Hanif is better than you … I have been to a hotel with Hanif and I had sex with him. And I really enjoyed having sex with him and he is much better than you in bed, and I have done everything with him … next time I go out with Hanif, I will do a video and I will send you the video" ("the Humiliating Words"). The appellant said that he got progressively angrier as Yati was speaking until he was no longer able to control his anger. He then tightened the towel around her neck and she stopped moving within a minute. The appellant believed at this point that Yati was already dead. However, he heard a sound that seemed to come from her throat and he covered her mouth with a towel in order to stop the sound. As the sound persisted, he decided to tie a rope around her neck to try to stop the sound. However, even after he did this, the sound persisted and so, he twisted her head forcefully from one side to the other after which, the sound stopped. The appellant claimed that his intention in taking all these further actions after he strangled her with the towel was merely to stop the sounds emanating from her, and was not to kill her, because he believed by then that she was already dead.

11 To the extent that the appellant's evidence at trial was inconsistent with his police statements, we can disregard it for the purposes of this appeal because, as we have already noted, Mr Thuraisingam conceded that the facts were as stated in the police statements (see [2] above). However, we have set out the appellant's trial evidence because it provides context for the Judge's decision, which we now turn to.

12 In relation to the first issue, which concerns the appellant's intention, the Judge found that the appellant's intention at the material time was to cause Yati's death (GD at [50]). This was clearly demonstrated by the number, nature, and the sequence of the physical acts committed by the appellant (GD at [48]). In addition, the appellant had admitted to Dr Ung Eng Khean ("Dr Ung"), the expert witness called by the Defence, that he had decided to kill Yati when he finally strangled her on 30 December 2018. Prior to coming to this point, he said he had circled the towel around her neck two times without tightening the towel. The accuracy of his admission to Dr Ung was not challenged at trial (GD at [49]). This showed that the appellant *intended* to cause Yati's death.

13 The appellant's intention to kill Yati was further reflected in the fact that he had already decided on a plan to kill Yati if she did not agree to break up with Hanifa, and had brought the rope along with him in order to carry this out (GD at [70], [78]).

14 In relation to the second issue, which concerns the partial defence of grave and sudden provocation, the Judge found that this was not made out because Yati never uttered the Humiliating Words. Given the allegedly momentous impact those words had on the appellant, it was highly significant that he did not mention this in any of his police statements and in his interviews with Dr Cheok. The first time he raised it was in an interview with Dr Ung on 19 May 2020, 17 months after killing Yati (GD at [90] to [93]). There was no sensible explanation for why the appellant did not mention this in his police statements (GD at [93]–[101]) or in his interviews with Dr Cheok (GD at [102]–[106]).

15 In relation to the third issue, which concerns the partial defence of diminished responsibility, the parties did not dispute that the first two elements

of diminished responsibility were established, namely that: (a) the appellant was suffering from AD which is an abnormality of mind; and (b) AD is a recognised mental disorder. However, the dispute was over whether the third element of the defence was made out, namely, whether the appellant's mental disorder substantially impaired his mental responsibility for the murder. The Prosecution submitted that this element was not satisfied, whilst the Defence submitted that it was.

16 The parties did not dispute that there are typically three ways in which a psychiatric condition may substantially impair a person's mental responsibility: (a) if it affects the person's perception of physical acts and matters; (b) if it hinders the person's ability to form a rational judgment as to whether an act is right or wrong; and (c) if it undermines the person's ability to exercise will power to control physical acts in accordance with that rational judgment (*Public Prosecutor v Wang Zhijian and another appeal* [2014] SGCA 58 ("*Wang Zhijian*") at [67]; *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [25]). The parties were also in agreement that there was no impairment of the appellant's perception of events and his ability to judge right from wrong. The only dispute was over whether his AD materially affected his self-control.

17 The Judge found that it did not (GD at [120]–[158]). The appellant's actions before, during, and after killing Yati proved that he was able to exercise self-control, assess the situation, weigh his options and act on that basis (GD at [137]–[140]). There was also no factual basis to support any suggestion that the appellant had a "surge of negative emotions" which led to his loss of self-control, since the Judge had found that Yati did not utter the Humiliating Words as alleged by the appellant. In addition, the appellant had already been aware that Yati wanted to break up with him and that she had a new boyfriend before

their final meeting. He had in fact quarreled with her about this every day in the period leading up to the murder. This was therefore not a new revelation which would have led him to lose his self-control (GD at [130]).

Parties' arguments on appeal

18 The appellant appealed against the Judge's findings on all three issues and essentially repeated arguments similar to those he had advanced before the Judge below.

19 In relation to the first two issues, the Defence argued in its written submissions that the Judge erred in relying on the appellant's police statements and his statements to Dr Cheok because the appellant was not in the right frame of mind when making those statements, and because there were alleged translation errors in those statements. It was also contended that the murder was not premeditated, and there was no intent to kill. Instead, the appellant had lost control upon being provoked by the Humiliating Words which led him to kill Yati.

20 However, Mr Thuraisingam did not pursue these two contentions during his oral submissions, which was plainly correct given that, by that juncture, the appellant had decided not to contest the accuracy of the appellant's police statements (see [2] above).

21 These two issues can be disposed of briefly. Based on the facts recorded in the appellant's police statements (see [3]–[8] above), it is clear that the appellant had planned the murder beforehand. Among other things, he had brought the rope with him as his chosen murder weapon, selected the Hotel as the meeting place because it was a private and convenient location where he could carry out the intended act of strangling her to death, and withdrawn his

money from his bank account on the morning of the murder so that he could have it remitted to his family in Bangladesh. At the Hotel, the appellant executed the premeditated murder in a systematic way. This was evident from the following facts (see [7] above):

(a) he circled Yati's neck with a towel and first tried to frighten her; but upon her refusal to end her relationship with Hanifa, he then strangled her by pulling the towel with all his strength, stepping on one end of the towel and pulling at the other end;

(b) he then circled her neck with the rope two to three times, tightened it using considerable strength, and then secured it with two or three knots;

(c) he placed a towel over her face and used his hand to press it over her mouth and nose with all his strength for 10 or 15 seconds; and

(d) he also twisted Yati's head from the left to right with considerable force.

22 We agree with the Judge that the preparatory steps the appellant took in advance of the murder and the manner in which he executed his plan by strangling and suffocating her showed beyond a reasonable doubt that he intended to kill Yati.

23 We also agree with the Judge that Yati did not utter the Humiliating Words alleged by the appellant. First, this was *not* in the appellant's police statements, and Mr Thuraisingam was content for us to rely on these as the relevant factual substratum for determining the appeal. Second, there is no

explanation for why he had not raised this exculpatory fact in his police statements or in his statement to Dr Cheok, if it had in fact occurred.

24 The appellant did attempt to advance some reasons for not mentioning the Humiliating Words in his police statements, but these were simply not believable. He claimed that he had not mentioned this in his cautioned statement because: (a) he was going to die and since he loved Yati, he did not want to reveal the "very bad words" which Yati had said (about their having sex or about her new boyfriend being better than him) as "people might say bad things about her"; and (b) the statement recorder might get annoyed or angry with him if he mentioned it and he therefore decided to be "precise" and give his statement in a "shortcut way". However, these contentions did not cohere at all with the fact that the appellant revealed many other facts in his cautioned statement which reflected badly on Yati, such as her cheating on him with another man, despite his having spent a lot of money on her (see also GD at [95]). In addition, he had given many details in his cautioned statement, which contradicted his claim that he was trying to be brief (see also GD at [96]).

25 The appellant also claimed that he did not mention the Humiliating Words in his long statements because: (a) he felt it was pointless to do so as he was going to die soon; and (b) the statement recorder was a lady who looked like his girlfriend and he felt that it would not be nice to say such things to her in case she was offended by this. Both these reasons made no sense and hence were not credible. The appellant provided considerable detail in his long statements about how he and Yati had sex on various occasions; that Yati had cheated on him by having sex with another man; that he had threatened to kill Yati; and that in the conversations in the Hotel room, Yati had referred to herself as a prostitute and asked him for money. He also described in detail, the physical acts he committed in killing her. If he did not think it was offensive to mention

all of these matters to the statement recorder, and did not think it pointless to mention these details, then it beggars belief that he only thought it pointless or offensive to mention the Humiliating Words (see also GD at [98]–[101]).

26 Finally, the appellant claimed that he did not mention the Humiliating Words in his interview with Dr Cheok because Dr Cheok was a doctor and he did not understand how mentioning the words to Dr Cheok would be helpful. However, Dr Cheok had explicitly asked the appellant to help him understand why he had killed Yati, and the appellant had given Dr Cheok various reasons to explain why he had done so, including his contention that Yati had been harsh with him whenever he called her, and that he did not think of the consequences of killing her. In this context, it was inexplicable, and indeed inconceivable, that he did not tell Dr Cheok about the Humiliating Words, if, as he claimed, this was what in fact caused him to kill Yati (see also GD at [102]–[106]).

27 Instead, the first time the appellant mentioned the Humiliating Words was in his interview with Dr Ung, almost 17 months after the murder. The fact that he was revealing this to a doctor did not seem to trouble him on this occasion. We are satisfied this was a story that was concocted as an afterthought. Dr Ung himself admitted during cross-examination that the appellant would have had the motivation to lie to avoid punishment, and that the lapse of time would have given the appellant time to come up with such falsehoods (see also GD at [107]).

28 We therefore accept the Judge's finding that there was no provocation which would satisfy the elements of the partial defence of provocation. This disposes of the first two issues, which, as we have mentioned, were not pursued by the Defence at the oral hearing.

29 Instead, the focus of the oral submissions before us was on the third issue, namely, whether diminished responsibility could be made out. The Defence argues that diminished responsibility was made out on the ground that the appellant's AD substantially impaired his mental responsibility by causing him to lose self-control at the material time. On the other hand, the Prosecution seeks to uphold the Judge's finding that diminished responsibility was not made out. We will elaborate on the parties' arguments at the appropriate points in the course of our analysis.

Issues

30 The key issues to be addressed are these:

(a) whether the fact that a murder is premeditated precludes an accused person from availing himself of the partial defence of diminished responsibility pursuant to Exception 7 of s 300 of the Penal Code ("the legal question"); and

(b) whether, on the present facts, the appellant is able to establish the partial defence of diminished responsibility notwithstanding that the offence was premeditated ("the factual question").

The legal question

31 We first address the legal question. Neither party comprehensively addressed the legal question in either the written or oral submissions because they each focused on the factual question. As will be shown below, it is not strictly necessary for us to address the legal question because the present case can be resolved on its facts. Nevertheless, we think that it will be helpful to set out what our views are on the legal question in order to provide guidance for the issue to be considered further in a suitable case in the future when: (a) we have

the benefit of fuller submissions; (b) the legal question is directly in issue; and (c) we have the benefit of the views of psychiatric expert witnesses opining directly on this issue.

32 The general principles relating to diminished responsibility are uncontroversial. For an accused person to rely on this defence, he bears the burden of proving three cumulative requirements (*Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 at [79]; *Nagaenthran* at [21]):

(a) first, that he was suffering from an abnormality of mind;

(b) second, that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent cause; or (iii) was induced by disease or injury; and

(c) the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence.

33 The fact that an offence is premeditated does not preclude an accused person from proving the first two requirements, since it is possible for one to have an abnormality of mind which arose from a condition of arrested or retarded development of mind, from inherent causes, or was induced by disease or injury, and yet still be able to premeditate a murder. An example of this is *G Krishnasamy Naidu v Public Prosecutor* [2006] 4 SLR(R) 874 ("*Krishnasamy CA*"), which was relied on by Mr Thuraisingam. In *Krishnasamy CA*, the accused person planned to carry out a murder while having morbid jealousy, which is a disease of the mind.

34 The more difficult question is whether the fact that an offence is carried out pursuant to a premeditated plan precludes the accused person from being

able to establish the third requirement, namely, that his abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to the offence. This court has held previously that this requirement is largely a matter of commonsense to be determined by the trial judge as the finder of fact, based on all the evidence before him. Medical evidence would be important in determining the presence and/or extent of impairment but it is not determinative of the question of whether an accused's mental responsibility was substantially impaired. Further, what the limb contemplates is substantial impairment, not total impairment. On the other hand, trivial or minimal impairment would not suffice. What is required is an impairment of the mental state that is real and material, but which need not rise to the level of amounting to the defence of unsoundness of mind: see *Nagaenthran* at [33]; *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [64]).

35 There are typically three ways in which a psychiatric condition may substantially impair a person's mental responsibility: (a) where it affects the person's perception of physical acts and matters; (b) where it hinders the person's ability to form a rational judgment as to whether an act is right or wrong; and (c) where it undermines the person's ability to exercise his will to control physical acts in accordance with that rational judgment (see [16] above). The categories of factors that may impair mental responsibility are not closed and it is, in principle, open to an accused person to contend that there was substantial impairment by reference to other categories of mental capability and responsibility (see *Wang Zhijian* at [67]; *Nagaenthran* at [25]–[26]).

36 Where an accused person executes a murder in accordance with a premeditated plan, the accused person's abnormality of mind will typically not have substantially impaired his *capacity to understand events*, since he must comprehend what he is doing in order to be able to execute a premeditated plan.

37 We also think that premeditation would make it more difficult for an accused person to show that his *self-control* was substantially impaired. As the UK Supreme Court noted in *R v Golds* [2017] 1 All ER 1055 at [49], premeditation may demonstrate a degree of self-control that would preclude the argument that the accused person's self-control was substantially impaired. It is important to note that the accused person must prove that he *could not* resist his impulse, and not merely that he *did not* do so (*Chua Hwa Soon Jimmy v Public Prosecutor* [1998] 1 SLR(R) 601 ("*Jimmy Chua*") at [32]). This will be difficult to prove in the case of premeditated murders because, in most cases, there will be a considerable period of time between premeditation and execution, and this may afford the accused person the opportunity to regain rational control over his actions. This is typically an indicator pointing against any loss of self-control (*Zailani bin Ahmad v Public Prosecutor* [2005] 1 SLR(R) 356 at [63]). Further, the fact that an accused person takes deliberate steps towards the execution of the premeditated plan despite having moments of rational control when he is able to resist the impulse to carry out his actions but nonetheless proceeds suggests a conscious choice, made with *presence of mind*. This too is a factor that points away from the loss of self-control (*Jimmy Chua* at [33]).

38 Nevertheless, an accused person who commits a premeditated murder may yet be able to prove that his abnormality of mind had substantially impaired his mental responsibility by demonstrating that it impaired his *rationality in coming to the decision* to commit the murder. This is an aspect of the element of control, in the sense that although the accused person knows what he is doing, and to that extent has control over his conscious and deliberate actions, these actions are to carry out a decision that is the product of a disordered mind, which is not functioning rationally. In such circumstances, the court in assessing the rationality of the accused person's actions and the extent to which it may be said

that these were actions indeed within his control must take into account that the actions flowed from a decision that was the product of his disordered mind.

39 This was the case in *R v Brennan* [2015] 1 WLR 2060 ("*Brennan*"). The accused person there was charged with the murder of a client who had engaged his sexual services (at [1] and [7]). The murder was premeditated, as reflected in the fact that he had:

(a) thought of killing people for some months prior to the murder (at [16]);

(b) obtained the keys to an apartment that he planned to use as the murder location (at [8]);

(c) typed a note on his computer setting out his intended plan of stabbing the victim (at [9]);

(d) written a similar note setting out his plan of stabbing the victim and cutting his throat (at [11]);

(e) brought three knives and two hammers to the apartment (at [11] and [20]); and

(f) invited the victim to the apartment in order to kill the victim (at [11]).

40 The accused person then carried out his plan by stabbing the victim repeatedly in his chest and back and smashing the victim's skull (at [11]). He also wrote various symbols and writings on the wall, which included, among other things, pentagrams and references to Satan and hell. He also made certain scratches on the victim's back with a knife, which he later explained he had done in order to release the victim's spirit into the after-life (at [11]).

41 The defence expert witness, Dr Mezey, testified that the accused person had a mental disorder which substantially impaired his ability to form a rational judgment and exercise self-control at the relevant time (at [26]). The following passages of the judgment set out the crucial aspects of Dr Mezey's evidence (at [31] and [33]):

> She went on to say unequivocally, her stated reasoning being entirely in line with her written report, that **the mental disorder would affect the Appellant's ability to form rational judgments and would have a substantial impact upon that and upon his ability to exercise self-control.** She made clear in her evidence-in-chief that the undoubted preparations and planning for the killing did not affect her diagnosis. She also stated in her evidence-in-chief that: '**Core rationality is still retained by people with severe disorders . . . such people can present a facade of being entirely rational'**. She added, having further examined the Appellant during the trial, that the Appellant had an enduring disorder and long-term treatment would be needed.
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> …
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> In cross-examination Dr Mezey also said (as summarised in the summing-up) that she did not think the sexual activity with the victim was a 'trigger' to the killing. She did not think that there was any trigger as such to the killing; rather it was a gradual build up. It had, as we have said, been suggested to her that the Appellant's obtaining of the knives and hammers and so on and his subsequent conduct indicated planning and a capacity for rational thought. As to that she said, consistently with her evidence-in-chief: '**The planning for the killing was a logical consequence of his illogical thought process. He has the illogical thought that he has to kill someone and then goes about planning it in a logical way . . .** ' The Appellant was, she said, capable of setting up the situation to kill but that was not inconsistent with him experiencing profound mental health problems; he believed that killing was what he had to do. She said that '**the planning was the product of his thoughts and his thoughts were the product of a disordered schizotypal mind'**. She repeated that in re-examination. She reiterated her opinion that his mental disorder was a significant contributory factor causing him to kill. **His acts may have appeared to be controlled but were the product of an abnormal mind. She said that the Appellant was 'driven by an abnormal, out of control belief system at the point of killing'**.
>
> [emphasis added in bold and underline]

The assessment of the prosecution's expert witness was in line with that of Dr Mezey (at [27]).

42 This was an instance where the accused person maintained the ability to plan and effect the murder in a premeditated way even though his mental responsibility was substantially impaired. Dr Mezey drew a clear distinction between the accused person's rationality in forming the decision to kill the victim and his rationality in following through with that decision. She explained that while the accused person's mental disorder had caused him to lose rationality in respect of deciding to kill the victim, that being a consequence of his abnormal and out-of-control belief system and illogical thought process, he nonetheless maintained the rationality needed to plan and execute that irrational decision.

43 Despite Dr Mezey's evidence, the jury found the accused person guilty of murder. On appeal, the Court of Appeal held that the jury had erred in rejecting Dr Mezey's uncontroverted evidence (at [68], [71]), and allowed the appeal, substituting the charge of murder with manslaughter (at [72]).

44 *Brennan* thus demonstrates that an accused person who commits a premeditated murder may nonetheless be able to establish the partial defence of diminished responsibility by proving that his mental disorder substantially impaired his rationality and/or self-control in coming to the decision to commit the offending act. In such circumstances, this is not displaced by the fact that the accused person retained rationality and self-control to the extent of being able to carry out the disordered decision.

45 A similar decision was reached in *Krishnasamy CA*, where the accused person premeditated the murder of his wife and carried out the murder according

to his plan. The materials facts are set out in the High Court judgment in *Public Prosecutor v G Krishnasamy Naidu* [2006] 3 SLR(R) 44 ("*Krishnasamy HC*"). The accused person was angry with his wife who had been repeatedly unfaithful to him and had cheated on him with several other men (at [27]–[84]) and he decided to kill her (at [103]). He referred to a law book to ascertain the penalty for murder (at [103]), and then went to a temple to pray for a sign if his god did not want him to kill his wife. He did this because he knew he was about to do something wrong (at [104]). He chose to use a chopper to kill her, instead of a knife, because she had not died after he stabbed her with a knife on a previous occasion. He therefore went to a hardware shop to purchase a chopper (at [104] to [105]). At around 2.30am on 17 May 2004, he took a taxi to the workplace of his wife, armed with the chopper (at [106]). He chose that morning because he knew his wife was working the early shift that day, and he was on good terms with the security guard who, he knew, would be on duty (at [107]). Upon arrival, he went to a vacant factory opposite his wife's workplace and hid the chopper in an opening of a high wall (at [109]). He then went to his wife's workplace and conversed with the security guard (at [110]). At around 6am, the accused person went to retrieve the chopper and tucked it at his back (at [112]). He then re-entered his wife's workplace premises by climbing over the fence and hid behind a room (at [113]). When his wife appeared, he approached her. He handed her a piece of paper, claiming that it was a divorce document, and asked her to sign it (at [114]). When she took the paper and turned away from him, he attacked her with the chopper and killed her (at [114]).

46 The High Court judge found that the accused person was suffering from morbid jealousy at the time of the offence (at [130]–[198]), and it was accepted that morbid jealousy is a disease of the mind (at [200]). However, the judge found that the accused person had failed to prove that his illness substantially impaired his mental responsibility for the murder (at [210]). The judge

emphasised the accused person's "detailed plans to kill and his execution of the plan, as well as his awareness of the penalty for murder", and held that he was not persuaded that the accused person could not have resisted his impulse to kill the deceased (at [209]–[210]).

47 On appeal, the Court of Appeal reversed the decision of the High Court judge, finding that the accused person had sufficiently proved that his illness substantially impaired his mental responsibility for the murder. The Court of Appeal based its decision on the evidence of the expert witness, Dr Stephen Phang, which it found to be "well-reasoned" (*Krishnasamy CA* at [10]). Dr Phang testified that in his view, the accused person's morbid jealousy had substantially impaired his mental responsibility for the murder. The material parts of Dr Phang's evidence were set out in *Krishnasamy HC* as follows (at [204]–[206]):

> …
>
> Q: … How did the abnormality of the mind substantially impair his mental responsibility for killing his wife?
>
> A: Your Honour, the answer to this rests on the differing mental mechanisms between delusional jealousy versus normal jealousy. **The delusionally jealous will as a consequence of their psychiatric disorder behave with an abnormal facility and intensity, abnormal reaction, abnormal intense reaction to the believed infidelities. They were manifest characteristic behaviours which the normally jealous will not [have].** In the delusionally jealous, they will never be satisfied even when they say that they were sure as was typically, you know, classically the case in this accused even when he was absolute, he told me he was confirmed that she has been unfaithful. He still went on checking. The normally jealous will not do that, your Honour. The normally jealous, once they are sure, will desist and then they will take other steps, other---possibly other practical steps and it is my submission, your Honour, that it is because of his state of mind, the delusional state of mind, the delusional interpretation of the observations he made, even casual observations, that was what pointed to the fact that he was psychotic. A delusion, your Honour, is a form of psychosis. It is a type of psychosis.

> Psychosis has various manifestations. **In this particular instance, the type of psychosis, the symptom of psychosis he manifested was the delusion of jealousy and it is this psychotic process which, on the balance of clinical probabilities, I concluded substantially impaired his mental responsibility.**
>
> Q: Dr Phang.
>
> A: Yes.
>
> Q: How has this disorder, jealous---how has this disorder known as delusional disorder (jealous type) impaired the accused in his planning to kill the wife?
>
> A: Your Honour, I have testified that **the delusional disorder (jealous type) does not impair the planning process of the individual but the impairment is contained in other aspects of his life.**
>
> …
>
> Q: You see, Dr Phang, I---I have yet to elicit from you---I---I'm still unable to understand in what sense, in what manner did the disorder, you know, impaired---substantially impaired his mental responsibility for killing the wife?
>
> A: **Your Honour, his mental---his psychiatric or mental disorder <u>resulted in him believing that his wife was unfaithful and further believing that the only way to end his personal sufferings inflicted upon him supposedly by his spouse was to kill her.</u>** And that is the link, your Honour, that I believe perhaps counsel is--- is looking for and I hope this is---that was helpful.
>
> [emphasis added]

48 As can be seen from the emphasised text, Dr Phang testified that a person with morbid jealousy will, as a result of their psychosis, have an abnormally intense reaction to any perceived infidelity. In the case at hand, because of his disorder, the accused person believed that the only way to end his personal suffering was to kill his wife. In other words, his disorder had substantially impaired his ability to make rational decisions, and caused him to make abnormal and disordered decisions.

49 Dr Phang reached this conclusion despite taking the view that the accused person "knew exactly what he was doing … intended to do what he in fact did … [and] knew it was wrong as well". His evidence thus supports the proposition that there is a distinction between one's rationality and responsibility for deciding to commit the act and one's rationality in following through with that decision. In *Krishnasamy*, the accused person's abnormality of mind caused him to form the irrational or disordered decision to kill his wife. Subsequent to this, he retained sufficient rationality and control to execute that decision, but in doing so, his actions were merely flowing from his decision to kill that was a product of his mental disorder. The court found that this sufficed to constitute substantial impairment of his mental responsibility.

50 It seems to us that the principle that can be drawn from *Krishnasamy CA* and from *Brennan* may be stated thus: where an accused person executes a murder in accordance with a premeditated plan, diminished responsibility may be made out if he is able to prove on a balance of probabilities that his mental disorder substantially impaired his ability to make rational or logical decisions, and this disorder caused him to decide to kill the victim. In such cases, the accused person may premeditate the actions to follow through on that decision under a veneer of rationality, but the decision to kill is in essence the product and acting out of the disordered mind.

51 As we see it, this is an appropriate test, subject to two refinements. First, we think that in this context, where it is the decision to carry out the offending act that is said to be disordered, the accused person must show that *but for* his abnormality of mind, he would not have made that decision. This is a necessary limitation to exclude cases where the accused person would have made the same decision even if he was not suffering from the relevant abnormality of mind. As pointed out by the Judge in her GD at [128] and also in *Krishnasamy HC* at

[210], even those without an abnormality of mind may make appalling decisions and plan murders. Plainly such an offender ought to bear the responsibility for his acts and face all the consequences of the law.

52 Second, the accused person must also prove on a balance of probabilities that in executing his intention to murder, he had no realistic moment of rationality and self-control that would have enabled him to resile from that intention or plan. This is because, as explained at [37] above, the failure to resile from such an intention despite the opportunity and occasion to do so may show that the accused person had *chosen not to resist* killing the deceased, instead of having been *unable to resist* it. Diminished responsibility would not be made out in such a situation, because the accused person must show that he *could not* resist the murder, and not merely that he *did not* do so (see [37] above).

53 For completeness, we note that there have been other cases where the accused persons were able to successfully establish the partial defence of diminished responsibility even though the murders in those cases were premeditated. These are not especially helpful because it is not clear from the evidence or reasoning *how* the accused person's mental responsibility was impaired by the abnormality of mind in question. Nevertheless, they are useful in showing that premeditation in and of itself does not preclude a finding of diminished responsibility.

54 In *R v Brown* [2011] All ER (D) 05 ("*Brown*"), the accused person premeditated the murder of his wife by digging a large hole in a remote spot and burying a garden box in the hole (at [10]) before driving to his wife's place, bringing along a hammer with him (at [7]). Upon arriving, he smashed her head 14 times (at [8]) before carrying her unconscious body to the boot of his car (at [9]) and driving her to the garden box. There, he wrapped her body in a

surfboard bag and plastic sheet, placed it into the garden box, and buried her in it as though it were a coffin (at [10]). The accused person later pleaded guilty to manslaughter, but the prosecution rejected this and proceeded with the charge for murder (at [2]). The defence expert witness testified that the accused person had an adjustment disorder which substantially impaired his self-control at the time of the killing (at [14]). The prosecution expert witness disagreed that the accused person had any abnormality of mind, and testified that in any event, such abnormality of mind would only be relevant if the jury found that the murder was not premeditated (at [14]). The jury found that diminished responsibility was made out and the judge therefore sentenced the accused person on a conviction of manslaughter (at [16]). On appeal, the Court of Appeal expressed the view that there was strong evidence to show that the prosecution was correct in not accepting the guilty plea of manslaughter (at [2]), implicitly signaling its doubt as to whether diminished responsibility was correctly made out. It also noted that there was no lack of self-control in the accused person's actions after the murder (at [26]). Nevertheless, they found themselves bound by the jury's finding of diminished responsibility (at [2]). We share the reservations of the English Court of Appeal as to whether the jury was right to have found that diminished responsibility was made out, since there does not seem to be any evidence that the accused person had acted irrationally in making the decision to kill his wife. The factual findings of this case may thus need to be treated with caution.

55 In *R v Matheson* [1958] 2 All ER 87 ("*Matheson*"), the accused person premeditated the murder of a boy whom he paid for sexual services. He had filled a glass bottle with water to make it heavier, wrapped it with newspaper to avoid cutting his hands if the glass bottle broke, and then smashed the boy's head with the bottle. He later sawed the boy's body in half and disemboweled him. The accused person subsequently furnished statements confessing that he

killed the boy because he knew that the victim would have his week's pay on him, and in other statements confessed that he killed the boy because he had demanded £2 as payment for his sexual services when the accused person was only willing to pay £1. The jury convicted him of murder. On appeal, the Court of Appeal substituted the conviction with one of manslaughter, finding that the defence of diminished responsibility was made out, because there was uncontroverted medical evidence that the accused person was mentally deficient (having the mental intelligence of a ten-year old), and that this substantially impaired his mental responsibility.

56 We think that *Matheson* too should be viewed with caution because the judgment is silent as to *how* exactly the accused person's mental responsibility was impaired and how this was related to his abnormality of mind. This may have been the case because *Matheson* was decided before *R v Byrne* [1960] 3 All ER 1 ("*Byrne*"), which was the landmark decision that first set out the three categories of mental responsibility that have now become established law (see [16] above).

The factual question

57 We now turn to the factual question. The sole issue, as we have noted, is whether the appellant's AD substantially impaired his mental responsibility for the murder.

58 In our judgment, it did not because the appellant was rational, had self-control, and was fully able to comprehend events at the critical moment when he finally decided to kill Yati. The appellant unequivocally admitted in his police statements and in his statement to Dr Cheok that he decided to kill Yati because he was afraid that she would call the police. He confessed in his police statements that: "When I started to tighten the towel, I then realised that if I left

her in this circumstance, she would call for police. I decided to kill her". He also said, "When I saw the blood, I knew that 'Yati' would call for police if I let go. So, I pulled tighter". Similarly, he admitted to Dr Cheok that: "I … slapped her. Then I thought if I let her go now, she would call police so I thought, I might as well kill her".

59 These statements show that he was able to exercise self-control and rational thought throughout the incident right up to the time of the killing, and that he finally decided to kill her because he was afraid that she would call the police if she survived (see also GD at [137]). This was a decision that was made rationally and was fueled by the appellant's very real and logical fear that Yati may indeed call the police if she survived, to report him for assaulting her. It was this real fear, and not his AD, that was the operative cause behind his final decision to kill her at the material time. When the appellant saw the injury, he had caused Yati, he *chose* not to resile because he did not want to face the prospect that Yati would call the police. There was, therefore, no substantial impairment of his mental responsibility for the murder.

60 This conclusion was corroborated by Dr Cheok's evidence at trial. Dr Cheok attested that he did not think the appellant's AD substantially impaired his mental responsibility for the offence, and in particular, it did not impair either his judgment of what was right or wrong or affect his self-control at the critical point. Dr Cheok reached this conclusion based on the facts which the appellant had narrated as follows:

(a) the appellant had already thought of killing Yati months before the actual murder;

(b) he had come up with a decision tree pursuant to which he would kill Yati if she did not agree to restore their relationship;

(c) he exhibited self-control on the day of the killing as shown by the two initial acts of strangulation which he was able to stop midway in order to talk to Yati before he finally strangled her to death; and

(d) he also had the presence of mind to have sex with Yati twice before the final strangulation.

61 During the oral hearing, Mr Thuraisingam focused on segments of Dr Cheok's evidence which, according to Mr Thuraisingam, amounted to an acceptance by Dr Cheok that the appellant had lost his self-control at the critical moment. Dr Cheok agreed that although the appellant had wrapped the towel around Yati's neck a couple of times that day, it was only when Yati told him that that would be the last time they met, that the appellant actually tightened the towel and strangled her *to death*. Dr Cheok also seemed to accept that this was the stressor that "triggered him at that point … [a]nd so he started executing his … plan", and was what "broke the straw on the camel's back". While the appellant "had the capacity minutes ago to restrain himself" and "had exercised control to stop", after Yati told him that that was the last time they would meet, "it started off [the] chain of events that eventually led to the killing". This, it was said, escalated the appellant's anger, depression, and jealousy, and *culminated in the killing*.

62 In our judgment, this submission was misplaced for a number of reasons. First, the question whether there was such impairment as to give rise to the partial defence of diminished responsibility is a question of fact to be resolved by the trial judge as a matter of common sense, having regard to all the evidence, in particular the factual evidence (see [34] above). In the present case, the irresistible conclusion to be drawn from the appellant's police statements is as

we have analysed at [58]–[59] above, and this, which concerns a matter of fact, is not affected by what the expert witnesses might have said as a matter of their opinions.

63 Second, Dr Cheok explicitly testified to the contrary in other parts of his evidence (see [60] above). Further, these segments of Dr Cheok's evidence only go towards showing that the stressor of never seeing Yati again escalated the appellant's anger and triggered him to execute his plan to kill Yati. But Dr Cheok did not say that the appellant had lost self-control even in this context. In fact, his explicit testimony was to the contrary. Finally, the Judge who had the advantage of hearing the evidence did not accept the appellant's case. Having regard to the admissions made by the appellant in his police statements, on no basis can the Judge's finding be said to be against the weight of the evidence. Unsurprisingly, in such instances, an appellate court would not normally interfere with the findings of the trial judge, for good reason: see *Krishnasamy CA* at [7].

64 We also note for completeness that some of Dr Cheok's observations and responses to the questions at trial may have been based on an incomplete or perhaps incorrect recollection of the events on 30 December 2018. He gave his views upon the factual premise that the appellant had twice threatened to strangle Yati but did not do so, and that it was only *after* Yati told him that that day would be the last time that they would meet, that the appellant strangled Yati. However, this factual premise contradicts Dr Cheok's own case notes which suggest that Yati had *at the beginning of her meeting* with the appellant on 30 December 2018 already told him that that day would be the last time they would meet.

65 This factual premise is also inconsistent with the appellant's police statements which make clear that it was not a surprise to him that Yati wanted to break off their relationship on 30 December 2018. The appellant said in his statements that Yati had already told him in the course of a phone call prior to 30 December 2018 that their meeting on 30 December 2018 would be the last time they met. In addition, the statements show that the appellant and Yati had been continually arguing over their relationship issues every day for at least a week prior to the murder, as well as throughout their time in the Hotel, and Yati had already previously informed him unequivocally that she was not willing to restore their relationship. Further, there was no mention *in the statements* that Yati had told the appellant *at the Hotel* on 30 December 2018 that that day would be the last time that they met. Instead, these statements, which Mr Thuraisingam accepts should be treated as accurate (see [2] above), show that the appellant had already known prior to 30 December 2018 that that would be the last time they met. There was thus no sudden or shocking stressor which would have triggered the appellant, even though there may have been a gradual and deepening realisation that Yati was serious about what she had already told him. This same point was made by the Judge in her GD at [130].

66 The extract of Dr Cheok's evidence at trial that Mr Thuraisingam sought to rely on should therefore be understood as having been based on an incorrect or incomplete version of the facts. Significantly, it was not highlighted to Dr Cheok at trial that the factual premise based on which he gave his opinion was inconsistent with what the appellant had said in police statements, and also with what the appellant had earlier told Dr Cheok.

67 Next, we turn to the evidence of Dr Ung for the Defence. At trial, Dr Ung testified that the appellant's AD substantially impaired his mental responsibility for his acts in relation to the offence, for two key reasons.

(a) First, Dr Ung was of the view that if the appellant did not have AD, he would not even have come up with the decision tree as to the circumstances in which he would kill Yati.

(b) Second, Dr Ung was of the view while the appellant's AD did not impair his self-control *before* or *after* the offence, the critical point of assessment was the time when Yati finally told him that she did not want to continue the relationship with him and that she had another boyfriend. That was when the intensity of the appellant's AD would have peaked, and it was to be expected that he would have had a surge of negative emotions which would compromise his cognitive processes. The appellant's AD thus significantly contributed to the offence by making his emotions more unstable, exacerbating his anger, and reducing his self-control and ability to make appropriate choices.

68 The Judge did not accept Dr Ung's view and we agree with the Judge (GD at [128]–[130]). First, as noted at [64]–[66] above, Yati had already told the appellant prior to their meeting at the Hotel on 30 December 2018 that that would be their last meeting. In the premises, there was no factual basis for the allegation of a "surge of negative emotions". Second, even assuming (without accepting) that the appellant's AD did substantially contribute to his decision to formulate the decision tree to kill Yati, and even assuming (also without accepting) that his AD did make his emotions more unstable, the fact remains that the appellant was sufficiently rational and in self-control at the critical time so as to make a conscious decision to carry out the act *so that she would not be able to report his acts of violence to the police* (see [58]–[59] above).

69 Finally, we address the appellant's argument that Dr Ung and Dr Cheok had both been unaware that the appellant suffered from problems in his work as

a result of his relationship problems, and that their ignorance of this fact may have caused them to underestimate the severity of the appellant's AD.

70 In our judgment, this argument too is without merit. First, the Defence provided no evidence to corroborate the bare claim that the appellant suffered from work problems. Second, even if this were true, neither expert witness had testified as to whether and how they would have diagnosed the severity of the AD differently had they known about the appellant's alleged work problems. It is not for us to speculate as to what the expert witnesses might have said. Third, even if the expert witnesses were to agree that the appellant's AD was more severe than they had known, this would not affect the analysis set out above as to what in fact caused the appellant to decide to kill Yati.

71 For these reasons, we are satisfied that the partial defence of diminished responsibility is not made out and the appeal is therefore dismissed. The conviction under s 300(*a*) is affirmed as is the mandatory death penalty.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

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