

# The Murderer's Defence: challenging a murder charge under s 300 of the Penal Code

\*Written by: Hannah Tan

## I. Introduction

Recent news of a woman who brutally stabbed and killed her eight-year-old daughter drew public shock and an outpour of condolences from online netizens. The woman was eventually acquitted owing to her mental incapacity – the court found that she suffered from schizophrenia and had been “hearing voices” telling her to kill her daughter.<sup>1</sup> This raises the question – what defences may an accused charged with murder raise to escape liability under Singapore law?

The offence of murder is laid out in section 300 of the Penal Code.<sup>2</sup> Depending on the nature of an accused's conduct, he may be sentenced to death<sup>3</sup> or to life imprisonment and caning at the discretion of the judge.<sup>4</sup> Given the grave consequences flowing from such a conviction, it is crucial to consider the defences available to an accused.

## II. The Operation of Defences

Even where the elements of an offence have been established, an accused may escape liability (either fully or partially) by establishing a defence on a balance of probabilities.<sup>5</sup> Where murder is concerned, these defences exist as ‘**Special Exceptions**’ under section 300 of the Penal Code, in addition to the ‘**General Exceptions**’ in Part IV of the Penal Code, which generally apply to all offences.

Where a general exception is successfully raised, an accused may be fully acquitted. However, where an accused relies on a special exception, the charge of murder may be reduced to one of culpable homicide not amounting to murder, only partially exculpating the accused.<sup>6</sup> The practical implication is that the most severe punishment the accused may face is no longer the death penalty, but either life imprisonment, or a combination of imprisonment, caning, and a fine.<sup>7</sup> Consequently, whether an accused successfully raises a defence makes all the difference between life and death.

## III. Theoretical Basis

Defences may operate as justifications, excuses, or on the grounds of an accused's mental impairment.<sup>8</sup>

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\*Year 4 LL.B. student, Yong Pung How School of Law, Singapore Management University. Edited by: Ong Ee Ing (Senior Lecturer), Yong Pung How School of Law, Singapore Management University.

<sup>1</sup> Selina Lum, “Woman with schizophrenia who killed 8-year-old daughter acquitted, to be confined indefinitely” *The Straits Times* (20 September 2022) <<https://www.straitstimes.com/singapore/courts-crime/woman-with-schizophrenia-who-killed-daughter-8-acquitted-to-be-confined-indefinitely>>.

<sup>2</sup> Penal Code 1871.

<sup>3</sup> Section 302(1) of the Penal Code 1871.

<sup>4</sup> Section 302(2) of the Penal Code 1871.

<sup>5</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [2.28] and [16.3]; S. Chandran Mohan, *Understanding Criminal Law* (LexisNexis, 2<sup>nd</sup> Ed, 2017) at p 4.

<sup>6</sup> Section 299 of the Penal Code 1871.

<sup>7</sup> Section 304 of the Penal Code 1871.

<sup>8</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.3].

Where a defence operates as a *justification*, the accused is essentially taking responsibility for his harmful conduct, but asserting that his conduct was justifiable on the basis of social utility.<sup>9</sup> One example would be the defence of “**private defence**”,<sup>10</sup> where an accused commits murder because the deceased had, for example, charged at him with a knife, causing the accused to strike back. In such situations, the accused’s conduct may be deemed justifiable, fully exculpating him.<sup>11</sup>

In contrast, where a defence operates as an *excuse*, the starting point is that the accused’s conduct was unjustified. Nevertheless, the law deems it inappropriate to punish the accused due to certain characteristics he possesses.<sup>12</sup> For example, the defence of “**sudden fight**” is raised where a victim is killed during a sudden fight between him and the accused, in the heat of passion, upon a sudden quarrel.<sup>13</sup> While the law does not condone killing during a fight, it recognises that the deceased is partly to blame for the quarrel and fight; such is the consequence of human frailty.<sup>14</sup> Accordingly, the accused is partially excused for his actions.

Finally, it may be inappropriate to punish an accused who was suffering from a *mental impairment*. Where justifications and excuses are concerned, an accused recognises that the offence is made out, but seeks exculpation due to the broader context in which the offence took place. In contrast, evidence of one’s mental impairment may be used to directly deny that elements of an offence are established.<sup>15</sup> The accused’s incapacity to understand socially accepted standards of conduct renders it unfitting to punish him. Instead, such individuals may be subject to clinical intervention in a psychiatric institution.<sup>16</sup> The defences of “**diminished responsibility**” and “**unsoundness of mind**” fall squarely into this category, and are explored below.<sup>17</sup>

#### IV. Key Defences to Murder

##### A. A partial excuse – Provocation

The defence of ‘**provocation**’ operates as a partial defence, lowering a conviction of murder to culpable homicide not amounting to murder.<sup>18</sup> It is invoked where an accused loses his self-control due to grave and sudden provocation, resulting in the death of the person who provoked the accused.<sup>19</sup> The defence recognises that individuals may be “emotionally overwhelmed and offended” due to feelings of “extreme fear, sadness, depression or even jealousy”, provoked

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<sup>9</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.11].

<sup>10</sup> Sections 96–106A of the Penal Code 1871.

<sup>11</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.11].

<sup>12</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.12].

<sup>13</sup> Exception 4 to s 300 of the Penal Code.

<sup>14</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.12] and [30.5]–[30.8].

<sup>15</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.5].

<sup>16</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [16.15]–[16.17].

<sup>17</sup> See Part IV(B) below.

<sup>18</sup> Exception 1 to s 300 of the Penal Code 1871.

<sup>19</sup> Explanation to Exception 1 to s 300 of the Penal Code 1871.

by the deceased himself.<sup>20</sup> In such situations, while the accused is not completely blameless, he is partially exculpated as the deceased bears some blame for provoking him.<sup>21</sup> The defence is therefore increasingly perceived<sup>22</sup> as a partial excuse, and not a complete justification.<sup>23</sup>

To rely on this defence, two requirements must be established. *First*, the accused must have been deprived of self-control by the provocation. *Second*, the provocation must have been grave and sudden. An ordinary person sharing the accused's sex, age and characteristics must have been so provoked so as to lose his self-control.<sup>24</sup> Not all forms of provocation suffice, and the defence is not available to persons "who overreact because they are 'exceptionally pugnacious and bad-tempered and over-sensitive'".<sup>25</sup> Instead, the provocation must have been so grave so as to "[offend] the standards of a civilised society". For example, offensive statements relating to religious or racial bigotry may suffice.<sup>26</sup>

To illustrate: in *Pathip Selvan s/o Sugumaran v Public Prosecutor*,<sup>27</sup> the accused stabbed and killed his girlfriend. The two had had a tumultuous relationship: though the deceased had cheated on the accused on multiple occasions, the accused held intensely passionate feelings for her.<sup>28</sup> The accused intended to marry the deceased, and had given up his education to support her.<sup>29</sup> When the accused confronted the deceased after seeing her in bed with another man, the deceased was not only unapologetic, but had justified her infidelity by ridiculing the accused for his inferior sexual prowess.<sup>30</sup> In the context of the couple's overwhelming emotional turbulence, the deceased's statement was a grave provocation which caused the accused to lose his self-control and stab her.<sup>31</sup> The defence of Provocation thus succeeded.

In stark contrast is the case of *Public Prosecutor v Boh Soon Ho*.<sup>32</sup> The accused had been infatuated with the deceased, his romantic interest being unrequited. The two were not in a relationship, and had only held hands once, when it was crowded.<sup>33</sup> When the deceased informed the accused that she had been intimate with another man, the accused strangled her out of anger. Unlike in *Pathip*, this anger was caused by deceased's refusal to have sexual

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<sup>20</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [34].

<sup>21</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [29.9].

<sup>22</sup> The defence was historically seen as a justification focused on the blameworthy conduct of the provoker. However, given the increasing emphasis placed on the loss of self-control of the accused, it is now perceived as a partial excuse and a partial justification: Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [29.9]-[29.11].

<sup>23</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [29.10].

<sup>24</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [34]; See also *Public Prosecutor v Mohammad Rosli bin Abdul Rahim* [2021] SGHC 252 at [59]; *Public Prosecutor v Teo Ghim Heng* [2021] SGHC 13 at [194]; *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 at [59].

<sup>25</sup> *Public Prosecutor v Kwan Cin Cheng* [1998] 1 SLR(R) 434 at [65]; *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 at [61].

<sup>26</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [29.11].

<sup>27</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453.

<sup>28</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [6] and [40].

<sup>29</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [7] and [59].

<sup>30</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [59].

<sup>31</sup> *Pathip Selvan s/o Sugumaran v Public Prosecutor* [2012] 4 SLR(R) 453 at [59].

<sup>32</sup> *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58. The appeal was dismissed by the Court of Appeal, though no written grounds were rendered.

<sup>33</sup> *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 at [81].

relations with the accused, and not due to a provocation on the deceased's part.<sup>34</sup> The accused thus failed to reduce his murder charge to one of culpable homicide not amounting to murder.

Evidently, no two cases are identical, and the court is tasked with a complex duty of fact-finding. Prematurely comparing decisions on the basis of their differing outcomes should therefore be avoided, especially where a conviction as grave as murder is concerned.

### ***B. Mental Impairment – Unsoundness of mind & Diminished responsibility***

#### *(1) Rationale*

The twin defences of unsoundness of mind<sup>35</sup> and diminished responsibility<sup>36</sup> assume relevance where an accused was suffering from a mental impairment or abnormality during the commission of the offence.

While the defence of unsoundness of mind is a general defence which fully exculpates an accused, the defence of diminished responsibility is a special exception which only partially exculpates an accused. Nevertheless, even where the defence of unsoundness of mind is concerned, only a “qualified” acquittal results: the accused is not entitled to complete freedom, and may be required to undergo compulsory psychiatric treatment.<sup>37</sup> Mandating treatment reduces the threat these individuals pose to both society and to themselves, and is hence more appropriate than punishment.<sup>38</sup>

#### *(2) Unsoundness of mind*

To rely on the defence of unsoundness of mind, the accused must have been (1) suffering from an unsoundness of mind, which rendered him (2) incapable of knowing the nature of the act or that what he was doing was wrong, or completely deprived him of the power to control his actions.<sup>39</sup> Individuals suffering from mental and/or physical illnesses affecting the mind may rely on this defence. Examples include: delirium tremens, alcoholic dementia, and substance induced psychosis.<sup>40</sup> Naturally, expert medical opinion is often relied on by the court to comprehend the cognitive capacities of an accused, and whether the accused was truly incapable of understanding the wrongness of his conduct.<sup>41</sup>

For instance, in *Public Prosecutor v Pham Thi Tuyet Mai*,<sup>42</sup> the accused was in the midst of a psychotic episode when she cut her housemate's neck with a knife. After killing her housemate, she sat beside her housemate's body and asked why she was sleeping.<sup>43</sup> The court held that the

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<sup>34</sup> Editorial Note in *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 regarding the Court of Appeal's decision.

<sup>35</sup> Section 84 of the Penal Code 1871.

<sup>36</sup> Exception 7 to s 300 of the Penal Code 1871.

<sup>37</sup> Section 252 of the Criminal Procedure Code 2010. Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [24.1] and [24.6].

<sup>38</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [24.6].

<sup>39</sup> Section 84 of the Penal Code 1871.

<sup>40</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [24.10].

<sup>41</sup> *Public Prosecutor v Pham Thi Tuyet Mai* [2016] 11 MLJ 281 at [28].

<sup>42</sup> *Public Prosecutor v Pham Thi Tuyet Mai* [2016] 11 MLJ 281 at [28].

<sup>43</sup> *Public Prosecutor v Pham Thi Tuyet Mai* [2016] 11 MLJ 281 at [12].

accused was incapable of understanding the nature and quality of her actions during her psychotic episode, availing her of the defence.<sup>44</sup>

### (3) *Diminished responsibility*

To rely on the defence of diminished responsibility, the accused must have been (1) suffering from an abnormality of mind which (2) arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury, and which (3) substantially impaired his mental responsibility for causing the death.<sup>45</sup> Unlike the defence of unsoundness of mind which requires a *total* deprivation of the accused's capacities, the defence of diminished responsibility requires a *substantial* impairment of the accused's cognitive capacities.<sup>46</sup>

For instance, in *Ong Pang Siew v Public Prosecutor* ("**Ong Pang Siew**"),<sup>47</sup> the accused killed his step-daughter. According to expert medical opinion, the accused suffered from major depressive disorder.<sup>48</sup> At the time of the incident, he had behaved abnormally by banging the deceased's head against the floor, constantly apologising to her, and by laughing and crying when the police arrived. While being interviewed by the police, he began banging his head against the wall.<sup>49</sup> His charge of murder was therefore lowered to that of culpable homicide not amounting to murder, for which he was convicted.<sup>50</sup>

### C. *Private Defence & Exceeding Private Defence*

Where the state is unable to protect its people from violence inflicted by others, such as an attack by a person walking down the street, the law permits the attacked individual to protect himself.<sup>51</sup> The law deems that the attacked individual is protecting the community's peace, as well as his own property and/or persons, and therefore regards his conduct as justifiable.<sup>52</sup> However, whether this extends to *killing* the attacker depends on whether the stringent requirements of the defence of "**private defence**"<sup>53</sup> are made out, or if the alternative defence of "**exceeding private defence**"<sup>54</sup> is more appropriate.

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<sup>44</sup> *Public Prosecutor v Pham Thi Tuyet Mai* [2016] 11 MLJ 281 at [32].

<sup>45</sup> *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [32]; *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [27]; *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at 58.

<sup>46</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [26.44].

<sup>47</sup> *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606.

<sup>48</sup> *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [79]–[89].

<sup>49</sup> *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [92].

<sup>50</sup> Notably, the Court of Appeal in *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 had overturned the trial judge's findings that the accused had not been suffering from an abnormality of the mind. In particular, the trial judge had overlooked key facts such as how the accused had contemplated suicide even prior to the incident. Such a system of appeal by the Court of Appeal evinces how the courts are able to set things right where something goes amiss in the first instance. Given the availability of such corrective procedures, hasty conclusions on the correctness of decisions should be avoided.

<sup>51</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [20.4].

<sup>52</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [20.7].

<sup>53</sup> Sections 96–106A of the Penal Code 1871.

<sup>54</sup> Exception 2 to s 300 of the Penal Code 1871.

To rely on the defence of private defence, a key inquiry is whether the accused's actions were *reasonably necessary and proportionate* to the threat, justifying a complete acquittal.<sup>55</sup> For example, was it really necessary and proportionate to kill an attacker, if all the attacker did was to gently shove the accused? Unsurprisingly, it is often difficult for the accused to establish that his brute act of killing was truly necessary and proportionate to the danger.

Consequently, in situations where killing was an excessive response, the alternative defence of Exceeding Private Defence may be relied on. This Special Exception recognises that the accused is not completely free of blame for overstepping what was permissible, but also appreciates that the accused's actions are not so egregious so as to justify a conviction of murder, given that the accused was seeking to defend his property and/or persons which were under attack.<sup>56</sup> Accordingly, the accused is partially exculpated.

To illustrate, in *Roshdi v Public Prosecutor*,<sup>57</sup> the deceased had been choking the accused while reaching for his gun. The accused, finding it difficult to breathe, hit the deceased multiple times with a mortar, eventually killing him. The court held that the defence of private defence was not made out as the accused had *exceeded* the right by striking the deceased on the head *more than once*, resulting in his death.<sup>58</sup> Nevertheless, the defence of exceeding private defence was established, exculpating the accused from the charge of murder.

## V. Conclusion

In sum, where an offence as severe as murder is concerned, whether a defence is successfully established makes critical difference in deciding if an accused faces the death sentence. More importantly, the label of 'murderer' should not be used flippantly. Circling back to the case above where a mother had killed her daughter after "hearing voices", such cases inform us that murder often occurs against the backdrop of complex human relations, with the agonising outcome of a life lost. Consequently, educating the public to react in a respectful, thoughtful manner, as opposed to prematurely pinning all the blame on a party, enables both victim and perpetrator to heal with ample time and space, allowing society to move past such gruesome instances more resiliently.

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<sup>55</sup> *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [39] and [46]. There are five requirements that an accused must establish before relying on the defence of Private Defence. The accused must have been (1) subject to an offence and (2) attempted to seek help from the relevant authorities. Further, he must have (3) reasonably apprehended the danger, (4) the right of private defence must not have subsided when he acted against the offence, and (5) the harm inflicted must not have been more than reasonably necessary.

<sup>56</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) at [21.6].

<sup>57</sup> *Roshdi v Public Prosecutor* [1994] 3 SLR(R) 1.

<sup>58</sup> *Roshdi v Public Prosecutor* [1994] 3 SLR(R) 1 at [42].