

***Defence of Diminished Responsibility for a Premeditated Murder?***  
***Ahmed Salim v Public Prosecutor [2022] SGCA 6***

**I. Executive Summary**

Can an accused party who is convicted of premeditated murder nonetheless use the (partial) defence of diminished responsibility? The Court of Appeal (“CA”) explored the issue in *Ahmed Salim v Public Prosecutor* [2022] SGCA 6, holding that such a defence was not precluded.

**II. Material Facts**

**A. Background**

The defendant Ahmed Salim (“**Salim**”) and the victim (“**Yati**”) had been in an intimate relationship for some time, and in November 2017 planned to get married. However, a few months later, Yati started seeing other men. While there was an initial confrontation, the two of them continued to date from sometime in July or August 2018. After the second time Yati admitted that she had a new boyfriend (“**Hanifa**”), Salim was so upset that he decided to kill her. He decided on a rope as his potential murder weapon, as it was convenient to carry around yet strong enough to kill her. He also decided to use the hotel where he often met Yati at, because of the privacy it offered and since it would not be as easy to strangle her in other public locations.

Salim arranged to meet Yati at the hotel on 23 December 2018 and brought the rope with him in his pocket. They checked into a room at the hotel. Yati lied to Salim that she had not met with Hanifa, and convinced Salim that she would continue to meet him as they had been doing. He therefore decided not to proceed with his plan to kill her. However, after they parted ways, Yati called him later the same evening and told him that she wanted to end their relationship. Salim was again very upset by this and decided that he would kill her when they next met.

He persuaded her to meet him at the hotel again on 30 December 2018, and she agreed. On that day, Salim intentionally wore the same clothes he had worn on the previous occasion because he knew the rope was still in his pocket. He also withdrew nearly all the money in his bank account, to remit to his family in Bangladesh.

After they had sex, Salim tried to convince Yati to break off her relationship with her new boyfriend and threatened to kill her if she did not. He then took a towel and circled it around her neck twice in order to frighten her. Yati refused to break up with Hanifa and replied that as far as she was concerned, Salim could kill her. Salim then “decided to kill her”. After tightening the towel around her neck, he saw blood flowing out of one of Yati’s ears and realised that Yati would call the police if he let her go and she survived. He therefore decided to kill her and pulled the towel even tighter by stepping on one end of the towel and pulling at the other end. He removed the towel, but then heard a sound coming from her mouth. In order to “make sure that she was dead”, he placed a towel over her face and pressed down with all his strength for 10 or 15 seconds. He then twisted Yati’s head “to ensure that [even] if [a] doctor came, she also would not survive”.

Shortly after he killed Yati, Salim tried to escape from Singapore. He was eventually apprehended by the police when he showed up at his employer’s office to discuss his repatriation arrangements. He struggled, and force had to be used to effect the arrest.

**B. At trial**

In the High Court (“**HC**”), Salim was charged with murder under section 300(a) of the Penal

Code (Cap 224, 2008 Rev Ed) (“**Penal Code**”). It was not disputed that he had caused Yati’s death. However, he raised (among other things) the partial defence of diminished responsibility. While both the Prosecution and the Defence agreed that Salim satisfied two of the three requirements for proving diminished responsibility, that (1) he suffered from an abnormality of mind, i.e. his adjustment disorder, and (2) that this was a recognised mental disorder,<sup>1</sup> the parties disagreed over the third requirement, i.e. (3) whether the disorder substantially impaired Salim’s mental responsibility for the murder.<sup>2</sup> The Prosecution argued that this element was not satisfied, whilst the Defence argued that it was.

The HC disagreed with the Defence, holding that Salim’s adjustment disorder did not materially affect his self-control. Salim’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.

### **III. Issues on Appeal**

On appeal, the CA considered the following matters:

- (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 section 300 of the Penal Code (“**the legal question**”); and
- (b) whether Salim could establish the partial defence of diminished responsibility notwithstanding that the offence was premeditated (“**the factual question**”).

#### **A. The Legal Question**

The CA addressed the following points of law, before reaching its decision.

The fact that an offence is premeditated does not preclude an accused person from proving the first two requirements of diminished responsibility (*i.e.* suffering from an abnormality of mind that was a recognized mental disorder), 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. 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, *i.e.* that his abnormality of mind has substantially impaired his mental responsibility for his acts and omissions in relation to the offence.

This is 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 is not determinative. Further, what is required is *substantial* impairment, not total impairment; conversely, 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.

There are typically three ways in which a psychiatric condition may substantially impair a person’s mental responsibility: (1) where it affects the person’s perception of physical acts and matters; (2) where it hinders the person’s ability to form a rational judgment as to whether an act is right or wrong; and (3) where it undermines the person’s ability to exercise his will to

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<sup>1</sup> The full requirement is 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.

<sup>2</sup> The full requirement is that the abnormality of mind must have substantially impaired his mental responsibility for his acts and omissions in relation to his offence.

control physical acts in accordance with that rational judgment. It remains open to an accused person to contend that there is substantial impairment by reference to other categories of mental capability and responsibility.

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). Premeditation would also make it more difficult for an accused person to show that his self-control was substantially impaired. The accused person must prove that he could not resist his impulse, and not merely that he *did not* do so. 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. 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.

Nevertheless, the CA held that 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. 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.

For instance, in *R v Brennan* [2015] 1 WLR 2060 ("**Brennan**"), the accused could still plan and effect the murder in a premeditated way even though his mental responsibility was substantially impaired. The defence's expert witness testified that the accused had a mental disorder which substantially impaired his ability to form a rational judgment and exercise self-control at the relevant time. The witness drew a clear distinction between the accused's rationality in *deciding to kill* the victim, and his rationality in *following through* with that decision. While the accused's mental disorder caused him to lose rationality in deciding to kill the victim, he nonetheless maintained the rationality to plan and execute that irrational decision. Thus, the accused could avail himself of the defence of diminished responsibility, and his murder charge was reduced to that of manslaughter.

The court also referred to *G Krishnasamy Naidu v Public Prosecutor* [2006] 4 SLR(R) 874 ("**Krishnasamy**"). There, the accused found out that his wife had been repeatedly unfaithful to him. He then came up with an elaborate plan to kill her. The court held that the accused could rely on the defence of diminished responsibility. It referred to the evidence of the expert witness and accepted that the accused's morbid jealousy substantially impaired his ability to make rational decisions and caused him to believe that the only way to end his suffering was to kill his wife. The CA held that the expert witness's evidence further supported the proposition that there was a distinction between one's rationality and responsibility for deciding to commit the act and one's rationality with executing that decision.

Relying on the above points, the CA held that where an accused person executes a murder with a premeditated plan, diminished responsibility may be made out if he can prove on a balance of probabilities that his ability to make rational or logical decisions was substantially impaired and that 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.

In addition, where it is the decision to carry out the murder that is alleged to be disordered, an accused must show that *but for* his abnormality of mind, he would not have made that decision. This is 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. After all, even those without an abnormality of mind may make appalling decisions and plan murders. Such an offender ought to bear the responsibility for his acts and face all the consequences of the law.

Finally, the accused 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 (or abandon) that plan. The failure to resile from such an intention despite the opportunity and occasion to do so may show that the accused person has *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.

### ***B. The Factual Question***

The CA held that Salim's adjustment disorder did not substantially impair his mental responsibility for the murder. The evidence pointed to the fact that Salim was rational, had self-control and was fully able to comprehend events when he killed Yati. As such, he could not avail himself of the defence of diminished responsibility.

In his police statements, Salim described the killing and his state of mind in relative detail. This suggested that he had rational thought throughout the incident, and finally decided to kill Yati due to his fear that she would report him to the police for assaulting her if she had survived.

These conclusions were supported by the opinions of the expert witness, who believed that Salim's adjustment disorder did not substantially impair his mental responsibility for the offence and that he was still able to decide what was right or wrong at the critical point. Particularly, Salim thought of killing the victim months before the actual murder and had come up with a decision tree to that effect. Salim also had the presence of mind to talk to the victim and have sex with the victim before finally strangling her.

The CA rejected the defence's submissions on segments of the expert witness' evidence, which seemed to suggest that Salim had lost his self-control. It noted that the expert witness' (both psychiatrists) explicit testimonial suggested that Salim retained his self-control. Further, the court held that the portion of the expert witness' evidence that the defence sought to rely on should be understood as having been based on an incorrect or incomplete version of the facts.

Finally, the CA rejected the defence's argument that the expert witnesses might have underestimated the severity of Salim's adjustment disorder, as they were unaware that Salim suffered from problems in his work due to his relationship. The CA noted that the defence did not provide evidence to show that Salim suffered from work problems. Further, both expert witnesses did not testify as to how they would have diagnosed the severity of the disorder had

they known about the alleged work problems. Even if the expert witnesses were to agree that Salim's disorder was more severe than expected, this would not affect the analysis of what caused Salim to kill the victim.

#### **IV. Conclusion**

In light of the above, the CA held that the partial defence of diminished responsibility was not made out and dismissed the appeal. Salim's conviction was affirmed, and his sentence of the mandatory death penalty was upheld.

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