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THE OFT NEGLECTED OBJECTIVE LIMB OF THE TEST UNDER SECTION 300(*C*)

Ensuring That the Particular Injury Is Truly Sufficient in the Ordinary Course of Nature to Cause Death

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Section 300(*c*) has long been a controversial provision of the Penal Code. Whereas much of the academic discussion on this section has focused on the subjective limb of the *Virsa Singh* test, this article argues that the oft neglected objective limb of the test is equally important. It should be applied more rigorously so that it can perform its intended function of ensuring that a charge of murder is only made out when the injury intentionally inflicted by the accused is sufficiently serious. This article argues that where the relevant injury can be assessed at various levels, care must be taken to identify the correct particular injury to be analysed. The particular injury should then be analysed through a detailed framework which includes analysing the chance of the injury resulting in death in percentage terms, ensuring that (only) appropriate considerations are taken into account when determining sufficiency, and having the forensic witnesses specifically consider whether it would be more accurate to describe the injury as one that is "likely to cause death".

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I. Introduction

1 Section 300(*c*) has long proven to be a controversial provision of the Penal Code 1871[1] ("Penal Code") that has generated considerable academic criticism. Much of the criticism has been directed at the jurisprudence that held that once it is proven that an accused intended to inflict the bodily injury which was in fact inflicted on the victim, the rest of the inquiry is an objective one of whether the injury is sufficient in the ordinary course of nature to cause death.[2] Various academics have advanced forceful arguments for a more subjective, rather than objective, approach to the issue of the requisite intention; in particular in relation to the injury the accused had intended.[3]

2 It could be said that these criticisms have been to a large extent, although perhaps some may argue not fully, addressed by the Court of Appeal's seminal judgment in *Public Prosecutor v Lim Poh Lye*[4] ("*Lim Poh Lye*") given that the court, among other things, "reinstate[d] the requirement for a serious intended injury".[5] Nevertheless, s 300(*c*) remains controversial and it has been argued that the problem with this section is that its wording is simply "antithetical to the retributivist ideal that a man should never be convicted beyond what he is morally culpable for";[6] and more recently, that the classic test in *Virsa Singh v State of Punjab*[7] ("*Virsa Singh*") is wrong and ought not to continue to be followed.[8]

1 2020 Rev Ed.
2 See, *eg*, *Public Prosecutor v Visuvanathan* [1978] 1 MLJ 159 and *Tan Joo Cheng v Public Prosecutor* [1992] 1 SLR(R) 219.
3 See, *eg*, M Sornarajah, "The Definition of Murder Under the Penal Code" [1994] Sing JLS 1 and Victor V Ramraj, "Murder Without an Intention to Kill" [2000] Sing JLS 560.
4 [2005] 4 SLR(R) 582.
5 Alan Tan Khee Jin "Revisiting Section 300(*c*) Murder in Singapore" (2005) 17 SAcLJ 693 at 715.
6 Alan Tan Khee Jin "Revisiting Section 300(*c*) Murder in Singapore" (2005) 17 SAcLJ 693 at 714.
7 AIR 1958 SC 465.
8 Jordan Tan Zhengxian, "Murder Misunderstood: Fundamental Errors in Singapore, Malaysia and India's Locus Classicus on Section 300(*c*) Murder" [2012] Sing JLS 112.

3 This article does not intend to tread the ground already covered by these learned commentators. Instead, this author proceeds on the assumption that *Lim Poh Lye* and *Virsa Singh* are rightly decided, but posits that the approach taken in respect of the objective limb of the current test for s 300(*c*), that is, whether the *particular* injury (as opposed to *precise* injury, a dichotomy that will be discussed later in the article) inflicted on the victim is sufficient in the ordinary course of nature to cause death, may be insufficiently rigorous.

4 In particular, this author suggests that there are at least two aspects with regard to which a more rigorous analysis may be taken.

5 First, in cases where the injury that caused the death of the victim can be assessed at various *levels* (for example, where the victim dies from uncontrolled loss of blood arising from the severance of a main blood vessel caused by a stab wound to the leg as in *Lim Poh Lye*), care must be taken to *identify* the correct injury as the particular injury to be analysed. It is submitted that the injury that must be sufficient in the ordinary course of nature to cause death ought to be the injury in the chain that has the *most direct connection*, or is the *most proximate*, with the cause of death, and which was *intended* by the accused. Where the accused has inflicted more than one injury on the victim that contributed to his death, it is equally important that the court be persuaded that each injury was intended before assessing whether these injuries collectively were sufficient in the ordinary course of nature to cause death.

6 Second, once the particular injury is identified, the forensic evidence should be tested using a more *detailed framework* for analysing whether this injury is sufficient in the ordinary course of nature to cause death. This should include analysing the chance of the injury resulting in death in percentage terms, ensuring that (only) appropriate considerations are taken into account when determining sufficiency, and having forensic witnesses specifically consider whether the injury might more appropriately be described only as one that is "likely to cause death", which

would form a basis for a charge of culpable homicide (under the second limb of s 299 of the Penal Code) but not murder.

II. Identifying the particular injury to be assessed

7 The facts of *Lim Poh Lye* illustrate that even where the forensic evidence shows that the victim died from a single injury, there may be different *levels* at which that injury could be assessed. In that case, the victim was stabbed seven times in the leg, and the forensic evidence was that the second stab severed a major blood vessel (the right femoral vein) which led to uncontrolled bleeding that ultimately resulted in the death of the victim. At the highest level, the injury could be considered to be the second stab wound. But the particular injury could instead be assessed at the level of the severing of the right femoral vein, or possibly even at the level of the loss of blood.

8 At the outset, it would clearly not be right to identify the particular injury as the loss of blood as that ought to be more appropriately characterised as the *cause of death*. It would not make sense for loss of blood to be characterised as the particular injury to be assessed because if this were so, in every case where the victim dies from loss of blood resulting from an intentional injury inflicted by the accused, the accused would be guilty of murder as long as it can be shown that he had intended to cause the victim to bleed. This would be far too low a standard to convict a person of the serious crime of murder, which can carry the death sentence.

9 However, it is less straightforward as to whether the particular injury should be identified as the second stab wound or the severing of the right femoral vein. Indeed, it appears that the trial judge and the Court of Appeal had reached different conclusions on whether one of the accused persons, Lim, committed murder largely because they had assessed the particular injury at different levels. The trial judge did not find that the charge of murder under s 300(*c*) was made out because he held that the "severing of [the victim's] right femoral vein was

not intentional".[9] In contrast, the Court of Appeal was satisfied that the charge of murder was made out on the basis that Lim had intended to cause stab wounds to the victim's legs. While the court accepted that Lim "did not know there was a main artery running through the leg and that the bleeding, if unattended, would, in the normal course of nature, cause death … it is never a requirement that the accused must realise the full gravity of his act".[10]

10 One difficulty arising from *Lim Poh Lye* is that this decision could lead one to infer that the particular injury is always the highest-level injury because the Court of Appeal had assessed the particular injury in that case to be the second stab wound, with the severing of the right femoral vein being characterised as the *precise* injury. It is submitted that this would not be the correct inference. Given that the *actus reus* of murder is the causing of death and the *mens rea* for s 300(*c*) is an *intention* to cause a bodily injury sufficient in the ordinary course of nature to cause death, it is submitted that the right approach should be to identify the particular injury as the injury that has the *most direct connection*, or is the *most proximate*, with the cause of death, and which was *intended* by the accused.

11 If this approach is applied to the facts of *Lim Poh Lye*, the starting point of the analysis would be to ascertain the cause of death, which would be the loss of blood. The inquiry would then proceed to assess the injury with the most direct connection with the loss of blood, which in that case would be the severing of the right femoral vein. The next question would be whether the accused had *intended* this injury. If Lim had intended to sever the victim's right femoral vein, then this injury would be the particular injury, and Lim would be guilty of murder under s 300(*c*) if severing a person's right femoral vein is sufficient in the ordinary course of nature to cause death. It is entirely possible for an accused to intend an injury as specific as the severing of the right femoral vein if, for example, the accused was medically trained or was a trained assassin. It is submitted

9 *Public Prosecutor v Lim Poh Lye* [2005] 2 SLR(R) 130 at [16].
10 *Public Prosecutor v Lim Poh Lye* [2005] 4 SLR(R) 582 at [37].

that if the evidence in *Lim Poh Lye* had been that Lim intended to sever the victim's right femoral vein, then it would have been wrong to identify the particular injury as the second stab wound and to assess whether that injury was sufficient in the ordinary course of nature to cause death.

12 What then if the accused's intention was more general? For example, what if the evidence in *Lim Poh Lye* was that Lim had repeatedly stabbed the victim's leg *in an attempt* to sever a major blood vessel? In that case, it is submitted that the particular injury would be the severance *of a major blood vessel* in the leg and the assessment would be whether this injury is sufficient in the ordinary course of nature to cause death. This is not a distinction without a difference. This is because presumably not all major blood vessels are similarly critical, and the rate of blood loss from severing different blood vessels may well be different.

13 If the evidence only supports the conclusion that the accused intended the second stab, as appears to have been the case in *Lim Poh Lye*, then that would be the particular injury to be assessed.

14 While identifying the intended injury with such precision does make the inquiry more complicated, and may require more in-depth analysis by the forensic witnesses, given the seriousness of a charge of murder, this is an exercise worth embarking on. This focus on the most proximate injury that is *intended* is consistent with the language of s 300(*c*) and with the third limb of the *Virsa Singh* test that requires that it must be established that the bodily injury in question had been intentionally inflicted. It is also consistent with the approach taken in *Public Prosecutor v Boh Soon Ho*[11] where the High Court held that the bodily injury that must be sufficient in the ordinary course of nature to cause death is "the injury which in fact caused the deceased's death and which the accused had intended to inflict".[12]

11 [2020] SGHC 58.
12 *Public Prosecutor v Boh Soon Ho* [2020] SGHC 58 at [55].

15 Where the cause of death is the result of multiple injuries (as opposed to a single injury that can be assessed at various levels), it would be equally important to determine whether each injury was intended by the accused. If each injury can be shown to have been intended by the accused, then the assessment should properly be whether these injuries collectively are sufficient in the ordinary course of nature to cause death. The approach in *Public Prosecutor v Phuah Siew Yen*[13] is instructive. In that case, the accused had strangled the victim's neck while sitting on her chest. The court found that the accused intended to strangle the victim's neck, but when he sat on the victim's chest, it was not his intention to inflict any injury on her by so sitting. The court held that the Prosecution had not proven murder under s 300(*c*) because:[14]

> … the medical evidence … is that the strangulation of the neck was augmented by the pressure on the chest as a result of [the accused] sitting on the chest. It must, therefore, remain in doubt whether the bodily injury [the accused] intended to inflict (i.e. the strangulation at the neck) would in this case be sufficient in the ordinary course of nature to cause death. [emphasis in original omitted]

III. A more detailed framework for analysing the particular injury

16 Once the particular injury has been identified, it will sometimes be relatively clear that the injury is sufficient in the ordinary course of nature to cause death. In some cases, the forensic evidence to that effect may not be disputed by the defence (as was the case in *Public Prosecutor v Zin Mar Nwe*).[15] In other cases, the extent of the injuries may be so extensive or grave as to speak for themselves, such as in *Public Prosecutor v Daryati*[16] where the autopsy report documented at least 75 stab and incised wounds on the victim's head and neck or as in *Public*

13 (1991) 3 CLAS News 30.
14 This was cited in *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [47].
15 [2023] SGHC 146 at [81].
16 [2021] SGHC 135 at [17].

Prosecutor v G Krishnasamy Naidu[17] where the cause of death was "due to sub-total decapitation caused by a gaping, deep incised wound across the neck".[18] In such cases, it may suffice for the assessment of the second stage to be "broad based and simple and based on commonsense".[19] In other cases, however, it is submitted that there would be good reason for the assessment to be done using a more detailed framework.

17 What is an injury that is "sufficient in the ordinary course of nature to cause death"? In *Wang Wenfeng v Public Prosecutor*,[20] the Court of Appeal observed that "'[sufficiency]' in this context refers to the high probability of death in the ordinary course of nature".[21] The difficulty with the phrase "sufficient in the ordinary course of nature to cause death" or for that matter the phrase "high probability of death in the ordinary course of nature" is that it is unclear how forensic witnesses regard or interpret these phrases. Correspondingly, it may often be unclear what these witnesses really mean when they opine that an injury is sufficient in the ordinary course of nature to cause death. It is entirely possible that one forensic witness could interpret these phrases as requiring that death must almost invariably result from the injury inflicted, while another could consider that a 75% chance that death would result suffices. Others may be satisfied with an even lower chance of death.

18 While the use of percentages may not always be appropriate, it is submitted that in many instances, asking a forensic witness his view as to the likelihood of death resulting from the injury inflicted in percentage terms would assist the court in understanding what a forensic witness is really saying when he opines that an injury is sufficient in the ordinary course of nature to cause death. This would in turn assist the court in making its finding of fact as to whether the injury is sufficient in the ordinary course of nature to cause death. While the forensic evidence would ordinarily be given significant weight by the

17 [2006] 3 SLR(R) 44.
18 *Public Prosecutor v G Krishnasamy Naidu* [2006] 3 SLR(R) 44 at [5].
19 *Virsa Singh v State of Punjab* AIR 1958 SC 465 at 467.
20 [2012] 4 SLR 590.
21 *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 at [33].

court, the issue of whether an injury is sufficient in the ordinary course of nature to cause death is ultimately a matter to be determined by the court. It is axiomatic that a trial judge may well make very different findings of fact depending on whether a forensic witness opines that the chance of death resulting from an injury is 51% as opposed to 99%, even if in both cases the witness takes the view that the injury is sufficient in the ordinary course of nature to cause death.

19 Further, an important question that does not appear to be often asked of forensic witnesses (at least based on reported judgments) that perhaps should be asked is whether they are confident that the injury is "sufficient in the ordinary course of nature to cause death" (such as to form a basis for a conviction of murder under s 300(*c*)) as opposed to merely being an injury that is "likely to cause death" (which would ground a conviction of culpable homicide under the second limb of s 299).

20 If a forensic witness is simply asked whether an injury is sufficient in the ordinary course of nature to cause death, he may well say that it is. This is particularly since there is a real danger that forensic witnesses may be unduly influenced by the fact that there is a dead body. Put another way, death has in fact occurred and if the forensic witness concludes that the cause of death is the injury or injuries inflicted by the accused, there may be a tendency to conclude that the injury or injuries must be sufficient in the ordinary course of nature to cause death. After all, it did cause death. But the inquiry is not whether the injuries intentionally inflicted by the accused *caused* death – that goes to the issue of causation – it is whether injuries of this *nature and gravity* are sufficient in the ordinary course of nature to cause death.

21 The autopsy report in *Public Prosecutor v Mohammad Rosli bin Abdul Rahim*[22] is an example where the forensic witness opined on causation – "death was caused primarily by the Fatal Stab Wound"[23] – but did not appear to opine specifically on whether

22 [2021] SGHC 252.
23 *Public Prosecutor v Mohammad Rosli bin Abdul Rahim* [2021] SGHC 252 at [8].

this injury was sufficient in the ordinary course of nature to cause death. The fact that the "lethality of the Fatal Stab Wound, as set out in the [autopsy report], remains unchallenged"[24] was held to satisfy the element that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. It should be mentioned, however, that the autopsy report in this case did analyse the various injuries in some detail and the accused did not appear to have contested this element, and this would have provided the court with the basis for finding as it did that the injury was sufficient in the ordinary course of nature to cause death.

22 By giving the forensic witness the option of characterising the injury as one that is "likely to cause death", the court will have a clearer picture of what the opinion of the forensic witness on the likelihood of death occurring as a result of the particular injury is. However, this still begs the question of the dividing line between an injury that is "likely to cause death" and one that is "sufficient in the ordinary course of nature to cause death". There ought to be no controversy that the latter imposes a higher standard than the former. As held in *Public Prosecutor v Sutherson, Sujay Solomon*,[25] the difference "lies in the degree of probability that death would eventuate from the injury caused".[26] Since "sufficient in the ordinary course of nature to cause death" connotes a higher standard than "likely to cause death", arguably this standard could be understood more simply as "highly likely to cause death".

23 While it may not be appropriate to impose hard and fast rules, in determining the likelihood of death occurring from the particular injury, the use of percentages could be a helpful guide. For example, it could be said that for an injury to be "likely" to cause death, the percentage chance of death resulting from the injury ought to be more than 50%. Anything less could hardly be described as "likely". It could even be argued that a standard of more than 50% is too low, as that would be more consistent with

24 *Public Prosecutor v Mohammad Rosli bin Abdul Rahim* [2021] SGHC 252 at [17].
25 [2016] 1 SLR 632.
26 *Public Prosecutor v Sutherson, Sujay Solomon* [2016] 1 SLR 632 at [48].

a "more likely than not" standard than "likely". As for what would qualify as an injury that is "sufficient in the ordinary course of nature to cause death", it is submitted that the chance of death resulting from the injury ought to at least be 75%, and arguably higher in most cases, given that the language of s 300(*c*) suggests that the injury should be one where death would result "in the ordinary course".

24 As discussed above, the inquiry into whether an injury is sufficient in the ordinary course of nature to cause death is distinct from the inquiry into causation. It is submitted that the inquiry at this stage ought to be: If an injury of the *same nature and gravity* as that inflicted by the accused on the victim is inflicted on a person with the *same characteristics* as the victim, whether it is highly likely that death would result.

25 In assessing the nature and gravity of the injury, all relevant aspects of the injury should be considered. If the injury inflicted is a stab wound with a knife, this could include, among other things, the length and type of knife used, the force of the stab, the depth of the wound inflicted, and the part of the body stabbed. All relevant characteristics of the victim, such as his age, build and general state of health, should also be considered but not any medical conditions that are peculiar to the victim that were not apparent or known to the accused.

26 In analysing the likelihood of death resulting from the particular injury, the *precise* injury would often be relevant. Using the facts of *Lim Loh Lye* as an example, if it is assumed that the precise injury in that case (that is, severing the right femoral vein) would almost certainly lead to death, the question would then be how likely it is that a stab, of the nature and gravity of the second stab (which would involve considering the specific knife used and the force applied by the accused), to the leg of a person with the characteristics of the victim would result in the severance of a main artery or vein. If the evidence shows that the accused intended to inflict other stab wounds to the victim's leg, the fact that he had stabbed the victim multiple times should also be taken into account in assessing the likelihood of a main artery or vein being severed. Further, if the other stab wounds

had exacerbated the victim's condition or hastened his death, this fact could also be taken into account in determining whether the injuries inflicted by the accused *cumulatively* were sufficient in the ordinary course of nature to cause death.

27 The importance of adopting such a rigorous approach is that while unlikely, it is *possible* that the second stab could have simply *happened* to sever a main artery or vein even though the probability of this happening is relatively low. For example, if the probability that a stab such as that inflicted by Lim on the victim only has a 5% chance of severing a main artery or vein of a person with the characteristics of the victim but that chance nevertheless eventuated, it would likely be a stretch to describe the injury as being sufficient in the ordinary course of nature to cause death. In contrast, if the probability of severing a main artery or vein was more than 50% and the evidence shows the accused intended and did stab the victim in the leg multiple times, it might readily be inferred that the particular injury is sufficient in the ordinary course of nature to cause death.

28 One further complication arises from the fact that the likelihood of death occurring as a result of any particular injury would, in many cases, be impacted by the possibility of medical intervention. In fact, it could be argued that many injuries, particularly ones that result in bleeding, could ultimately lead to death if left unattended for long enough. For example, in the case of a knife wound that leads to significant bleeding, it may be highly likely that death would result from such an injury without medical intervention. But it could also be true that if treated in time, it is highly *unlikely* that death would result.

29 In *Public Prosecutor v Muhammad Salihin bin Ismail*[27] ("*PP v Muhammad Salihin bin Ismail*") the Court of Appeal held that:[28]

> … in determining whether death would have resulted in the ordinary course of nature, the probability of death is to be determined without reference to the availability of timely

27 [2024] 1 SLR 792.
28 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [48].

> medical intervention or the possibility that the victim may have survived if medical treatment had been rendered.

30 The court used an illustration of an assailant who inflicts severe wounds on a victim and leaves him bleeding. The victim dies two hours later. The court observed that "[i]n this hypothetical, it could not be said that this was not an injury which was sufficient in the ordinary course of nature to cause death merely because death could have been avoided had a good Samaritan come across the victim minutes after the assault and promptly rendered or called for medical assistance" because this would "set the bar for a conviction under s 300(*c*) of the [Penal Code] impossibly high as one could always contend that such timely and effective medical intervention could have averted the victim's death".[29]

31 It is eminently sensible that the possibility of medical intervention should be discounted in cases similar to that of the hypothetical in *PP v Muhammad Salihin bin Ismail*. But if the victim does in fact receive medical treatment, then it is submitted that it would be important for the defence to adduce, and right for the court to consider, medical evidence regarding the likelihood that such treatment (and possibly also any other appropriate treatment that may, for whatever reason, have not been administered) could have prevented the victim's death. If there is cogent medical evidence that the medical treatment would likely have prevented the victim's death, then it would generally not be appropriate to characterise the injury as being one that is sufficient in the ordinary course of nature to cause death even if the victim does ultimately succumb to his injuries.

32 Even where the victim does not receive medical treatment, it is submitted that there may be cases where it might not be right to completely discount the possibility of medical intervention. This is especially where there was a reasonable opportunity for the victim to seek medical treatment but he chose not to do so, and there is a sufficient passage of time between the infliction of the particular injury and the victim's death. Let us consider

29 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [49].

an example where the victim is punched by an assailant in the abdomen and this causes slow bleeding in his liver. The victim does not see a doctor, and dies more than a week later. There is cogent medical evidence that had the victim sought medical treatment within the week, there would have been a 90% chance that he would have survived. In such a case, it ought to at least be arguable that the particular injury should not be characterised as one that is sufficient in the ordinary course of nature to cause death.

IV. Conclusion

33 A conviction of murder is a grave matter and carries severe penalties, including the death sentence. It should be reserved for the most serious of cases. The thrust of the holding in *Virsa Singh* is that "[n]o one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder".[30] The gravamen of the *Virsa Singh* test is the seriousness of the particular injury intentionally inflicted. The objective limb of the test is meant to ensure that the particular injury is sufficiently serious to justify a charge of murder. To fulfil this role, it is critical that the right particular injury is identified and that the forensic evidence unambiguously demonstrates its severity. This article has offered several suggestions aimed at refining how the objective limb is applied.

30 *Virsa Singh v State of Punjab* AIR 1958 SC 465.