REVISITING SECTION 300(*C*) MURDER IN SINGAPORE

Section 300(*c*) of the Penal Code has had a long history of judicial interpretation and academic comment in Singapore, with resulting controversy. In particular, the courts had opined that the provision applied to cases where the accused caused death even though he might only have intended a relatively minor injury. Yet, there have been cases where the courts have assiduously sought to avoid liability, often on account of the accused person's non-fatal motive. While a recent Court of Appeal pronouncement may have reduced the harshness of the provision and rendered some much-needed certainty to the area, difficulties remain in distinguishing between a relatively minor intended injury and a fatal actual injury. This article analyses the jurisprudence on s 300(*c*) and concludes that, at its core, the provision remains incompatible with its sister provisions in s 300 and with the fundamental notion that one should not be punished beyond one's moral culpability.

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I. Overview

1 Section 300(*c*) of the Penal Code[1] has long proven to be the most problematic provision governing the law of murder in Singapore. It prescribes that an act is murder "if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". The Indian and Singapore courts interpreting this provision have traditionally held that the latter part of the formulation must be determined objectively. This means that the accused need only be shown to have intended to cause an injury (*ie,* the first half of the test), and if the injury can be separately and objectively shown by medical evidence to be sufficient in the ordinary course of nature to cause death, he is guilty of murder.

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1 Cap 224, 1985 Rev Ed.

2 The classic test to be applied to s 300(*c*) was laid down by Vivian Bose J in the Indian Supreme Court case of *Virsa Singh v State of Punjab*:[2]

> [F]irst, it must be established quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; … Thirdly [and this is the critical limb], it must be proved that there was an intention to inflict *that particular injury*, that is to say, that it was *not accidental or unintentional, or that some other kind of injury was intended* … Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. [emphasis added]

II. Where the intended and actual injury are similar or congruent

3 The approach prescribed by Bose J in *Virsa Singh* is not normally problematic if the accused did intend to cause a particular injury, and did in fact inflict that injury. In other words, if there is little to distinguish between what was intended and what in fact came to be inflicted, liability is made out as long as the injury can be objectively determined to be sufficient in the ordinary course of nature to cause death. In *Virsa Singh* itself, the victim was injured by a spear thrust by the accused, and later died from peritonitis caused by the wound. This was thus a straightforward case for applying Bose J's test – the accused *did* intend that injury found to be present, and this injury *was* sufficient in the ordinary course of nature to cause death. There was thus no necessity for the Prosecution to show that the accused either intended death or knew it was likely or probable that death would result.

4 The particular injury that is sufficient in the ordinary course of nature to cause death need only be generally of the kind intended by the accused, and not *exactly similar*. Otherwise, the accused in *Virsa Singh* could well have pleaded that he never intended peritonitis to result, or indeed, that he even knew the abdominal area contained vital organs. The approach to interpreting the phrase "that particular injury" must be a commonsensical one. Bose J himself emphasised this point:[3]

> In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on the broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of

2 AIR 1958 SC 465 ("*Virsa Singh*") at [12]–[13].
3 *Id* at [11].

> injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

III. Where the intended and actual injury are distinguishable

5 So far so good. There is, however, a distinct category of cases which present interesting issues. These are the cases where the accused intends a certain injury (typically relatively minor), but somehow ends up inflicting a somewhat different but serious injury that leads to death. The well-known Singapore case of *Mohamed Yasin bin Hussin v PP*[4] is a prime example – the accused, while in the course of burgling the victim's hut, decided to rape her. He proceeded to sit on the victim's chest in order to subdue her. The victim subsequently died, and the cause of death was established to be cardiac arrest caused by the accused forcibly sitting on her chest during the struggle.

6 Here, it can be argued that the accused never intended "that particular injury" (in Bose J's words) which is sufficient in the ordinary course of nature to cause death. What he might have intended were injuries caused by or consistent with rape, but certainly not the internal injuries caused by sitting on her chest. To use Bose J's words again, this would be a prime situation where "some other kind of injury" was intended. Hence, where there appears to be a distinction between what is intended and what is actually inflicted, there is no liability for murder if the accused cannot be shown to have intended to cause the latter. Indeed, in allowing the accused's appeal, the Privy Council in *Mohamed Yasin* rested its decision on the Prosecution's failure to prove that the accused intended to cause the injury that *in fact* killed the victim.[5] In delivering the judgment of the Privy Council, Lord Diplock further commented in a famous *dictum*:[6]

4 [1975–1977] SLR 34 ("*Mohamed Yasin*").

5 For a detailed commentary on this case, see Victor V Ramraj, "Murder Without an Intention to Kill" [2000] Sing JLS 560 at 565.

6 *Supra* n 4, at 36, [8].

> Not only must the act of the accused which caused the death be voluntary in this sense; the prosecution must also prove that the accused intended, by doing it, to cause some bodily injury to the victim *of a kind* which is sufficient in the ordinary course of nature to cause death. [emphasis added]

7 In retrospect, *Mohamed Yasin* can be reconciled with *Virsa Singh* on account of the fact that what the accused intended to inflict was clearly different from what he ended up inflicting. In other words, he did not intend to cause the actual injury that proved to be sufficient in the ordinary course of nature to cause death. The words of Section 300(*c*) are clear – that which is required to be sufficient in the ordinary course of nature to cause death is the "injury intended to be inflicted", not the injury actually inflicted. Where there is congruence between the intended injury and the actual injury (subject to Bose J's commonsensical approach of not requiring every last detail to be intended), there is typically no problem, as with the majority of cases like *Virsa Singh*. But if all that is intended is something less, and quite different from that actually inflicted, the fact that the actual injury is sufficient to cause death cannot bring the accused within s 300(*c*). The crux is that one must intend *that* which causes death (even though he did not actually intend death, nor knew it likely that death would result).

IV. The "struggle" cases: Where the intended and actual injury are not easily distinguishable

A. The strict approach

8 Again, so far so good. In later years, the Singapore courts began to dissociate themselves from Lord Diplock's approach in *Mohamed Yasin*. Instead, the courts appeared to have veered toward a stricter interpretation of s 300(*c*) that was clearly less favourable to the accused. In the 1978 case of *PP v Visuvanathan*,[7] where the accused was charged with stabbing the victim in the heart, the High Court said that the Privy Council's opinion in *Mohamed Yasin* was factually accurate for that case but was not of universal application. The court, troubled by Lord Diplock's *dictum* that an intention to inflict an injury "of a kind" sufficient to cause death was necessary, felt that it did not think Lord Diplock meant by this to say that the second limb of s 300(*c*) was

7 [1975–1977] SLR 564 ("*Visuvanathan*").

subjective.[8] The court in *Visuvanathan* felt it irrelevant and unnecessary "to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury *found to be present* intended or accidental." [emphasis added][9] Thus, the focus appeared to have shifted to the actual injury found to be present; as long as that injury was not accidentally caused (in the sense of it being involuntary), the accused would be taken to have caused it intentionally, thereby attracting liability for murder.

9 On the facts of *Visuvanathan*, this stricter approach caused no huge alarm, since the accused probably did intend to stab the victim in the heart. *Visuvanathan*, however, marked the Singapore courts' first significant departure from the *Mohamed Yasin*-type reasoning. In later years, its progeny took the form of cases applying the stricter approach to those situations where the intended injury and the actual injury were not so easily distinguishable. Thus, quite apart from the two extremes of *Visuvanathan* and *Mohamed Yasin*, there can be much trickier situations within the spectrum of moral culpability wherein the intended injury and the actual injury, while conceptually different, are also closely linked together as to appear to form one single continuous event. The best examples would be the "struggle" cases, typically involving an accused trying to subdue a struggling victim. In some of these cases, the accused ended up inflicting a fatal injury in the course of the struggle, even though he may only have intended a relatively trivial injury to subdue the victim or to prevent screaming or escaping. In such situations, the accused may conceivably be heard to say that he intended one injury while not intending the other.

10 One of the most oft-cited cases in this regard is the 1992 case of *Tan Joo Cheng v PP*,[10] which built on the strict *Visuvanathan* approach. In this case, the accused attempted to rob the victim. In the ensuing struggle, he inflicted a stab wound to the victim's neck. In upholding conviction, the Court of Appeal held that under s 300(*c*), the Prosecution did not have to establish that the accused intended to cause an injury at a vital spot or injury of a type that would be sufficient in the ordinary course of nature to cause death. This was a clear qualification of Bose J's observation in *Virsa Singh* on striking at a "vital or a dangerous spot", and

8 *Id* at 567–568, [13]–[14].
9 *Id* at 566, [6].
10 [1992] 1 SLR 620 ("*Tan Joo Cheng*").

of Lord Diplock's *dictum* in *Mohamed Yasin* on intending some bodily injury of a kind sufficient to cause death.

11 The Court of Appeal in *Tan Joo Cheng* then famously added that:[11]

> Even if an accused intended to inflict *only a relatively minor injury*, if the injury that he *in fact inflicted pursuant to that intention* was an injury sufficient in the ordinary course of nature to cause death, the provisions of cl(c) of s 300 would be attracted. [emphasis added]

This startling approach clearly makes the accused liable for a consequence which he may never have intended. In effect, it is tantamount to the discredited common law maxim that a man is presumed to intend all the consequences of his act. It also renders s 300(*c*) totally out of kilter with the very high *mens rea* culpability needed to satisfy ss 300(*a*), 300(*b*) and 300(*d*). The focus on the actual injury also flies in the face of the literal text of s 300(*c*), which provides that it is the "injury intended to be inflicted" that is to be sufficient in the ordinary course of nature to cause death, not the actual injury.[12]

12 The above *dictum* in *Tan Joo Cheng* spawned a whole series of unfortunate decisions which reaffirmed and entrenched its view that the accused would be liable even if he intended to inflict only a relatively minor injury, as long as he did in fact end up inflicting an injury which caused death.[13] In other words, as long as the fatal actual injury was inflicted "pursuant to" an original intention to cause a (or any) bodily injury, there would be liability. By "pursuant to", the court decisions appeared to be saying that there would be liability as long as the fatal injury was inflicted *in the course of* the accused giving effect to his original intention, however innocuous that might have been.

13 The problem with *Tan Joo Cheng* is that, in quoting Bose J's words, the Court of Appeal omitted that critical part of the judge's test to the effect that there would be no liability if *some other kind of injury was intended*. Instead, the court emphasised only that part of Bose J's judgment that the accused "can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise

11 *Id* at 625, [18].
12 For elaboration on some of these arguments, see Ramraj, *supra* n 5, at 570–575.
13 See cases such as *Ong Chee Hoe v PP* [1999] 4 SLR 688, *Tan Chee Wee v PP* [2004] 1 SLR 479, *Arun Prakash Vaithilingam v PP* [2003] SGCA 12 and *Chan Choon Wai v PP* [2000] SGCA 32.

unintentional". In other words, this would be the only way to exonerate the accused. Thus, the court was highlighting only one part of Bose J's test without fully considering the context in its entirety.[14] *Even here*, the *Tan Joo Cheng* approach seems inconsistent with Bose J's test – if the intended injury was relatively minor, it must mean that the actual fatal injury was "otherwise unintentional".[15]

14 Overall, the Singapore courts' approach went along these lines: As long as the accused intended *any* injury, no matter how minor or trivial, he would be liable as long as he did in fact inflict a fatal injury pursuant to his original intention. The focus was clearly on the actual injury, contrary to the literal wording of s 300(*c*). On the facts of *Tan Joo Cheng* itself, it may well be accepted that the accused *did* intend to stab the victim in the neck, albeit in the course of a struggle. In *Visuvanathan*, the accused intended to, and did stab the victim in the chest. The outcomes in these two cases do not raise much problems, given that the accused in either case would have been hard put to show that "some other kind of injury" was intended. As argued below, it is not the result but, rather, the tests enunciated in *Visuvanathan* and *Tan Joo Cheng* that are problematic.

15 The concern arises, first and foremost, in those cases where the intended injury and actual injury are sufficiently distinct. Returning to *Mohamed Yasin*, even though this case has never been expressly overruled, the Singapore courts' position under *Visuvanathan* and *Tan Joo Cheng* would appear to dictate that a *Mohamed Yasin*-type case can be decided differently. Thus, even if the accused clearly intended to inflict only a minor injury, but through bad luck or pure circumstance ended up inflicting a totally different but fatal injury, he could still be liable. Here, the fatal injury would not be considered an accidental or unintentional one, for the courts would deem it an injury inflicted voluntarily pursuant to the original intention to cause an (or any) injury.

16 Instead of the inflexible test laid down in *Tan Joo Cheng*, the better approach would have been to inquire, on the facts of each case, whether "some other kind of injury" was in fact intended. This would have given full effect to Bose J's test – if the intended injury was indeed relatively minor (and different) compared to what was in fact inflicted,

14 In *PP v Lim Poh Lye*, *infra* n 16, the Court of Appeal, at [19], clarified that the reference to "or that some other kind of injury was intended" is merely an elaboration of the earlier exclusion of an "accidental or unintentional" injury.

15 This is assuming the intended injury is sufficiently distinct from the actual injury. Where this is not the case, problems arise, see discussion below.

the accused should not be liable. This can only be just, for if an accused did not have the *mens rea* beyond inflicting a relatively minor injury, he should not be liable for any fatal injury actually inflicted. In the same vein, the courts should be giving credence to that other part of Bose J's test – that there would be no liability if the actual injury inflicted was "accidental or *unintentional*" [emphasis added]. This "other" injury would have been clearly unintended.

17 Such an approach – never fully articulated in the Singapore courts before the Court of Appeal's latest pronouncement in *PP v Lim Poh Lye*[16] (more on this case below) – would necessarily entail assessing the culpable difference or "moral distance" between what was originally intended, and what was eventually inflicted. If, on the facts, they are sufficiently distinct (as in *Mohamed Yasin*), the accused should never be liable under s 300(*c*). Such a result would arguably not be possible with the *Tan Joo Cheng* approach, which prescribes liability even if the intended injury were wholly different and minor compared to the actual injury.

B. Cases departing from the strict approach

18 However, the "moral distance" approach can only be helpful if, indeed, the distance is appreciably great, *ie*, the intended injury and actual injury are sufficiently different for the courts to discern that "some other kind of injury was intended". As stated above, where the intended injury and actual injury are less distinct (as in the "struggle" cases), the problem is still not easily resolved. Here, the *dictum* in *Tan Joo Cheng*, if used, would easily have taken care of such cases (in favour of conviction). Interestingly, though, several Singapore judgments in recent years have actually gone out of their way to acquit the accused in such circumstances. Perhaps as a reflection of their discomfort with the *dictum* in *Tan Joo Cheng*, these decisions have generally sought to draw a distinction between what the accused intended (based interestingly, but wrongly, on his *motive*) and what was actually inflicted. At the same time, though, the judges involved (until *Lim Poh Lye*, that is) have never been able to fully disavow *Tan Joo Cheng*.

16 [2005] 4 SLR 582.

19 A few examples will illustrate the point. In *PP v Ow Ah Cheng*,[17] for instance, the accused was held not liable under s 300(*c*) for causing the death of a young girl with whom he was personally acquainted. He had been attempting to steal some items from the deceased's home when the latter caught him red-handed and began to scream. In the ensuing struggle, the accused covered her face with a pillow and grabbed her throat to stop her from screaming further. The deceased died from asphyxiation. The High Court, in convicting the accused for a lesser charge of culpable homicide not amounting to murder, felt that to secure a conviction for murder, the degree of harm used would have to be extreme as to be consistent only with an intent to do serious harm. Such was not the case here, and the court appeared to have been influenced by the fact that there was a solitary injury, and that the accused would have caused more serious injuries had he intended to kill the victim.

20 Hence, the court was prepared to accept that the seriousness of the intended injury was relevant. This is consistent with Lord Diplock's *dictum* in *Mohamed Yasin* that the Prosecution must prove that the accused intended, by his act, to cause some bodily injury to the victim *of a kind* which is sufficient in the ordinary course of nature to cause death.[18] In other words, Lord Diplock was suggesting that even if the intended injury and actual injury were different, the former must at least be of a serious kind before liability could attach. This also appears to be what the court in *Ow Ah Cheng* had in mind when it insisted that the degree of harm used would have to be extreme as to be consistent only with an intent to do serious harm. This is clearly contrary to the *Tan Joo Cheng* approach, which would have totally ignored the fact that the intended injury was relatively minor.[19] What was left unresolved, however, was whether the seriousness of the intended injury was a matter for objective determination by the court or a subjective question to be viewed from the accused's perspective.[20]

17 [1992] 1 SLR 797 ("*Ow Ah Cheng*"). The Public Prosecutor did not appeal against the High Court's judgment. The *Ow Ah Cheng* approach was applied by the Court of Appeal in *Sim Eng Teck v PP* [1998] 3 SLR 618.

18 *Supra* n 6.

19 Interestingly, the *Ow Ah Cheng* decision was rendered only 14 days after the Court of Appeal's decision in *Tan Joo Cheng*. The trial judges in *Ow Ah Cheng* did not cite *Tan Joo Cheng* in their decision, and it does not appear that the case was raised at all during the trial.

20 In *Visuvanathan*, the court clearly rejected a subjective determination, *supra* n 8. Indeed, the concern had always been that Lord Diplock's *dictum* could be interpreted to suggest a subjective determination.

21 *Tan Chee Hwee v PP*[21] is another "struggle" case where the intended injury and the actual injury were arguably different and yet not so easily separable, raising some difficult issues in applying s 300(*c*). Here, the accused were two friends who were charged with the murder of a maid. They were attempting to burgle a house with two other friends (the house actually belonged to one of them) when the maid unexpectedly returned and caught them in the act. In the struggle that ensued, the first and second accused attempted to subdue and silence the maid by tying an electric iron's cord around her. In the process, the cord was wound around her neck and she was strangled to death.

22 In allowing the appeal against a s 300(*c*) conviction, the Court of Appeal accepted that the accused only intended to stop the deceased from screaming and struggling, and did not intend to silence her forever. The court then concluded that the injury which was in fact caused to the deceased around the neck, in all probability, was not intentionally but accidentally or unintentionally caused. Based on the accused's exculpatory statements, the court accepted that it was possible that the accused may have been trying to tie the deceased up around the waist without any intention of causing her bodily injury. In this regard, the fact that the cord ended up strangling the deceased around the neck was in all probability an accident. The court further opined that had the first accused truly intended to "silence her forever", he could have easily hit the deceased with the iron rather than attempt to tie her up with the cord or even to strangle her with it. This suggested to the court that "even at that critical moment, [the accused] could not have formed an intention to strangle the maid with the cord of the electric iron as a means of 'silencing her forever'."[22]

23 Neither *Mohamed Yasin* nor *Tan Joo Cheng* was raised in the court's judgment. The court appeared to be emphasising that part of Bose J's test in *Virsa Singh* that there would be no liability if the injury was accidentally or unintentionally caused. Under the *Tan Joo Cheng* approach, however, the accused in *Tan Chee Hwee* would probably have been convicted as it would have made no difference if the intended injury was something relatively minor or different compared to that actually inflicted. Also, there would arguably have been no "accident" – the actual fatal injury was inflicted voluntarily pursuant to or in the course of the

21 [1993] 2 SLR 657 ("*Tan Chee Hwee*").
22 *Id* at 668, [46].

original intention (to inflict *some* injury). Arguably, it was not an "accident" as such.

24 Indeed, in another case involving similar facts where the accused attempted to rely on *Tan Chee Hwee*, the Court of Appeal was less charitable. In *Yacob s/o Rusmatullah v PP*,[23] the two accused persons, in the process of robbing the deceased, attempted to subdue her. When the deceased began to scream and struggle, the second accused held her down while the first accused used a length of raffia which he had brought along with him to tie her hands together. He then used the same length of raffia to tie a knot at her neck. The deceased died from asphyxiation as a result of the knot around her neck. In their defence, the accused claimed that they had only intended to tie the raffia around the deceased's mouth with a view to subduing her. The raffia had, unknown to them, slipped and as a result, her neck was tied instead. In this regard, the case appears similar to *Tan Chee Hwee*.

25 As it turned out, however, the Court of Appeal upheld the trial court's decision to convict, and sought to confine *Tan Chee Hwee* to its own facts. It pointed out that *Tan Chee Hwee* was different because, there, the accused had taken every effort to ensure that they entered the house when the maid was not home. Thus, they had not expected the deceased to come home, and her early return caused panic. Here, the accused had specifically planned to rob the deceased after observing earlier that she wore expensive jewellery. He had even brought along and thrown chilli powder in her face in order to ensure that she would not recognise him. In any event, the court felt that the *Tan Chee Hwee* court had clearly found that the injuries on the maid's neck were unintentional.[24] Here, the court clearly disbelieved the accused's story that he had only intended to tie the raffia around the mouth. That begs the question – if the accused *had* been believed, would he have been absolved on the strength of *Tan Chee Hwee*? Would his "moral distance" have been at least as appreciable as in *Tan Chee Hwee*?

26 This brings us now to the important case of *PP v Lim Poh Lye*,[25] the latest decision to have re-interpreted s 300(*c*). Here, the three accused abducted the deceased and forced him to sign over several cheques which they attempted to cash. To prevent him from escaping, the deceased was

23 [1994] SGCA 51 ("*Yacob s/o Rusmatullah*").

24 In another case, *Mohd Iskandar bin Mohd Ali v PP* [1995] SGCA 86, the Court of Appeal took a similar reading of *Tan Chee Hwee*.

25 [2005] 2 SLR 130, reversed on appeal, *supra* n 16.

stabbed in the thigh. One of the stab wounds penetrated the right femoral vein (a major blood vessel), leading him to bleed to death. This was thus another case where the intended injury and the actual injury, while conceptually distinct, are not so easily separable. In acquitting the first accused, Choo Han Teck J in the trial court followed the reasoning in *Tan Chee Hwee* and emphasised the fact that the first accused stabbed the victim only to prevent him from escaping, and never intended to sever the femoral vein.

27 Stepping back for a while, we see that in all these cases that have absolved the accused of s 300(*c*) liability, it is difficult to find an appreciable "moral distance" between the intended injury and the actual injury as existed in *Mohamed Yasin*. In *Lim Poh Lye*, for instance, it is difficult to see how "some other kind of injury was intended". In essence, it was one and the same injury that was intended *and* inflicted, just that it happened to sever the femoral vein (an unintended consequence). This is arguably no different from a spear thrust which happens to cause peritonitis, or a knife wound in the mouth which happens to sever an artery.[26]

28 Yet, in these cases, the relevant courts had refrained from using a *Tan Joo Cheng*-type approach, and were at pains to emphasise that the accused had not intended to inflict the actual injuries that led to the deaths. In *Tan Chee Hwee*, the court appeared to have employed a *Mohamed Yasin* kind of approach, drawing a moral distance between what was intended (tying up around the waist) and what eventuated (accidental tying around the neck). The court in *Yacob s/o Rusmatullah,* too, approved of the *Tan Chee Hwee* approach, only that it did not believe the accused meant to inflict a lesser injury.

29 Very significantly, the courts appeared to have justified their decisions by emphasising the *motive* for the accused's acts, *ie*, to prevent screaming and resistance in *Ow Ah Cheng* and *Tan Chee Hwee*, and to prevent escape in *Lim Poh Lye* (in the first instance court). In *Lim Poh Lye*, for instance, Choo J clearly felt that s 300(*c*) would not apply in "very special circumstances" where "the intended action … was inflicted for a specific non-fatal purpose".[27] Thus, in Choo J's view, a non-fatal motive might exculpate, *if believed*. Here, the emphasis on motive or purpose is

26 *Tan Cheow Bock v PP* [1991] SLR 293, see discussion at para 39 of the main text below.

27 *Supra* n 25, at [15].

doubtful. Motive is clearly distinct from intention – to establish *mens rea*, the law does not inquire into the purpose for which an accused commits a crime. The relevant *mens rea* inquiry in s 300(*c*) is simply whether the accused intended to inflict an injury, whatever his motive may be. Therefore, it should not matter why the accused stabbed the victim's thigh or whether his purpose was a fatal one or not, *as long as he intended to do so*.

30 That said, motive can be argued to be relevant to the extent that it conditions the degree of the accused's intention. It may well be that the accused can show that he intended injuries that went only so far as was needed to prevent the victim from escaping, and no more. Thus, while he could have gone further, he intended only that which was necessary to satisfy his motive. As the argument goes, that the femoral vein was severed (the actual injury) was as much an unintended consequence as, say, the cardiac arrest suffered by the victim in *Mohamed Yasin*. In Bose J's words, "some other kind of injury" was arguably intended, not the severing of the femoral vein. In sum, the courts in *Ow Ah Cheng*, *Tan Chee Hwee* and *Lim Poh Lye* (at first instance) appeared to be looking into the accused's (non-fatal) motive to infer that he intended to inflict something less than the actual injury. Using motive, they have sought to draw a distinction or "distance" between the intended and actual injuries, even though, as explained here, these are not as easily distinguishable as in, say, *Mohamed Yasin*.

31 Choo J in *Lim Poh Lye* was further influenced by the fact that the injury was to a non-vulnerable part of the body, opining that the full force of s 300(*c*) would apply "where an assailant stabs another in a vulnerable or sensitive region of the body, such as the chest, and claims that he did so to prevent escape".[28] This is a difficult argument to pursue. Here, the argument would have us accept that motive (to prevent escape) is irrelevant if the injury were to a vulnerable or sensitive region of the body. Yet, motive could be relevant if it were otherwise. As such, the relevance of motive appears to be conditioned upon whether the injury was to a vulnerable or sensitive part of the body. If the injury was inflicted for a specific non-fatal purpose (and injury to a non-sensitive part of the body like the leg or thigh would suggest that this is so), there would be no liability.

28 *Ibid*.

32 This line of reasoning is doubtful, for motive must remain irrelevant, whatever the circumstances of the injury. What Choo J probably had in mind is that when an accused injures the victim in a sensitive part of the body and then claims that he did so only to prevent escape or struggle, he will be less likely to be believed, as in *Yacob s/o Rusmatullah*. This is the only logical conclusion to draw. At the same time, it cannot be a rule of law that the relevance of motive is dependent upon where the injury is inflicted. What Choo J's judgment does reveal, though, is some fidelity to Bose J's reasoning that the intention to strike at a vital or dangerous spot *is* one relevant factor (though only one among many) in determining whether there was intention to inflict the injury found to have been inflicted. In any event, the facts of *Lim Poh Lye* suggest that it is not so easy to label some parts of the body as vulnerable or vital, while others are not.

V. The last word: The Court of Appeal in *Lim Poh Lye* and unresolved difficulties

33 At this point, after chronologically reviewing the rich jurisprudence of antecedent cases, we finally reach the last word on the matter (for now) of the Court of Appeal. In a decision rendered on 15 July 2005,[29] the Court allowed the Prosecution's appeal in *Lim Poh Lye*, reversed Choo J and imposed the death penalty for the accused. At the outset, it must be noted that the greatest favour the Court of Appeal has done for the s 300(*c*) jurisprudence is to finally rectify that problematic *dictum* in *Tan Joo Cheng* to the effect that even a relatively minor intended injury is sufficient to convict as long as a fatal injury is in fact inflicted. In no uncertain terms, the court stated that:[30]

> If the court should at the end of the day find that the accused only intended to cause a particular "minor injury", to use the term of the court in *Tan Joo Cheng,* which injury would not, in the normal course of nature, cause death, but, in fact caused a different injury sufficient in the ordinary course of nature to cause death, cl (c) would not be attracted.

34 Thus, while the Court of Appeal purported only to offer "clarification"[31] on *Tan Joo Cheng*, it appears to have effectively discarded

29 *Supra* n 16.
30 *Id* at [22].
31 The court, in referring to the *Tan Joo Cheng dictum*, said (*id* at [21]): "At this juncture, we ought to point out that there is a passage in *Tan Joo Cheng* (at 625, [18]) which, in our view, needs clarification." It then proceeded to lay out that passage verbatim.

with finality that most problematic *dictum* which had so seriously infected the later cases. Consistent with the result in *Mohamed Yasin*, it is at least clear now that where the intended injury and actual injury are sufficiently distinct, an intention to inflict a relatively minor injury *cannot* lead to conviction even if a fatal injury ends up being inflicted. This "clarification" is long overdue, and having finally been rendered, restores the original logic of Bose J's test in *Virsa Singh*.

35 The Court of Appeal in *Lim Poh Lye* then hurried to explain that the result would be different "if the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury".[32] In the court's view, s 300(*c*) is clearly made out if the offender intended to inflict what, in his view, was an inconsequential injury, where, in fact, that injury is proved to be fatal. Here, the court explained that the problem with the *Tan Joo Cheng dictum* was that it did not appear to differentiate between this situation and the one described earlier. In effect, the court is saying that where the actual injury was clearly intended by the accused (*ie*, there is no difference between the intended and actual injuries), it does not aid the accused to say that he never appreciated or realised the full consequences of his act.[33] Applying this to the facts at hand, the accused had clearly intended to stab the victim in the thigh (and did stab him there), and there can be no defence that he never intended to sever the femoral vein or to cause death by bleeding.

36 In addition, though without saying as much,[34] the court has effectively rejected the role of motive in absolving the accused. This relieves future courts from having to artificially (and wrongly) rely on motive to get around the *Tan Joo Cheng dictum*. As explained above, this had been what some earlier courts had been doing, emphasising that the accused only meant to silence or subdue the victim. Overall, the Court of Appeal has finally corrected its long-standing reliance on the *Tan Joo Cheng dictum* and reinforced the point that where the intended injury and actual injury are one and the same, the accused cannot escape liability if he failed to realise the consequences of his act.

32 *Id*, at [23]. The court also rejected Choo J's interpretation of *Tan Chee Hwee*, that there was a need to distinguish between the injury caused and the means by which it was caused, and that there would be no liability if the nature of the injury (as opposed to the act/strangulation) was accidentally caused, see *id* at [33].

33 See also the court's opinion, *id* at [37].

34 *Id* at [27], the Court of Appeal in *Lim Poh Lye* read Choo J to have suggested that the court was required to determine and have regard to the subjective intention as to the *purpose* of the act [emphasis added]. This, the court later implied in [32] and [45], was not correct.

37 This seductively simple logic, however, masks its own set of problems. The tasks of separating the intended and actual injuries, and of identifying whether "that particular injury" is intended and not "some other kind of injury" are fraught with difficulties. It all turns on how one characterises the fatal injury, and whether this can be sufficiently distinguished from the intended injury. How "different" or far-removed must the actual injury be from the intended injury to absolve the accused?[35] If one must intend that which causes death, what exactly is *that* which causes death? If we identify the most proximate or ultimate medical cause of death to be the fatal injury (*eg*, cut to femoral vein, peritonitis, asphyxiation, cut to vertebral artery), it is highly unlikely that we will ever be able to show that the accused intended that very result. This approach would render s 300(*c*) totally useless, and would not accord with Bose J's commonsensical approach, the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

38 Yet, if we step back a bit from the final consequence and ask if the accused intended to inflict some injury which *led* to the fatal result, the answer must invariably be "yes", particularly if the courts take the position that whatever is not caused accidentally must have been caused intentionally. Using the Court of Appeal's latest logic, even the accused in *Mohamed Yasin* could have arguably been convicted, for one could argue that by sitting on the victim's chest, he must have intended some injury, though without realising its true extent and consequences. Thus, he clearly intended to sit on the victim's chest (just as the accused in *Lim Poh Lye* intended to stab the thigh, motive being irrelevant), and the injury proved to be fatal even though he may have viewed it to be inconsequential or been indifferent to its effects. In sum, the characterisation of what the accused intended to inflict, and of what it is that constitutes the fatal injury, can be problematic. In those "struggle" cases where the intended injury and actual injury are not wholly distinguishable, this kind of hair-splitting enquiry is likely to result in inconsistent results, as evidenced by the Singapore cases analysed above.

39 For sure, the Court of Appeal's clarification of *Tan Joo Cheng* does not guarantee the end of such inconsistent outcomes, given the myriad permutations of human conduct that exist. The difficulty in achieving consistency in conviction is well illustrated by the earlier case of

35 The court quite clearly envisaged acquittal if a "different" injury than that intended was caused, *id* at [22].

Tan Cheow Bock v PP.[36] Here, the accused was charged with causing the death of the victim by inflicting a knife wound in the latter's mouth. In his defence, the accused claimed that he did so only to stop the deceased from shouting (he was attempting to rob the deceased). The appellant also called medical evidence to show that the fatal injury caused by the passage of the knife through the mouth (the severance of the left vertebral artery carrying blood from the heart to the brain) was one which was very difficult to inflict, thus showing that he never intended that fatal injury. The Court of Appeal had no difficulty upholding the accused's conviction. It recited with approval the *Visuvanathan* interpretation of Bose J's test, disapproved of Lord Diplock's *dictum* in *Mohamed Yasin*, and emphasised the fact that the injury was not caused accidentally.

40 While the result is consistent with the Court of Appeal's analysis in *Lim Poh Lye*, in that the failure of the accused to realise the ultimate consequence of his act is irrelevant, it is difficult to reconcile *Tan Cheow Bock* with *Ow Ah Cheng*. In both cases, the accused intended to stop the deceased from shouting, and arguably inflicted an injury only for this purpose (inasmuch as motive was found to be relevant in *Ow Ah Cheng*). In any event, it is hard to appreciate what "other injury" the accused in *Ow Ah Cheng* could have been intending. To use the Court of Appeal's words in *Lim Poh Lye*, both cases involved situations where "the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury". The only differences would have been the weapon and degree of force used – could the fact that the accused had thrust a knife into the deceased's mouth with great force (as opposed to a pillow to the face) have influenced the court?

41 It is no wonder then that the courts have appeared so inconsistent in applying s 300(*c*) to the different factual scenarios. Ultimately, we are left with judges using precious discretion when assessing the peculiar circumstances of the accused in each case. In particular, motive or purpose emerges as a potent factor (even though this is legally incorrect). The courts in *Ow Ah Cheng* and *Tan Chee Hwee*, for instance, were so evidently sympathetic to the accused, given that these were individuals who knew or were even fond of their victims, who could hardly have meant to kill or injure them, who were surprised by their sudden emergence and who inflicted injuries in the panic of a struggle while desperately trying to silence them. On the other hand, are

36 *Supra* n 26.

the accused in *Yacob s/o Rusmatullah* less deserving of sympathy on account of their having set out to commit something heinous? And the accused in *Tan Cheow Bock* for thrusting the horrific knife in the mouth?

42 The instinctive desire to avoid harsh results in individual cases also leads to illogical outcomes – the accused persons in *Ow Ah Cheng* and *Tan Chee Hwee* ended up being convicted for culpable homicide not amounting to murder. Under s 299 of the Penal Code, the controlling provision for this offence, the accused must still be shown to possess the requisite *mens rea* that is coterminous with the *mens rea* of the corresponding provision in s 300. If the intention to inflict the fatal injury cannot be shown under s 300(*c*), it *must* necessarily mean that s 299[37] is not made out either, with the only logical result being acquittal. However, the judges were presumably unwilling to have the accused go free, and through some unexplained mechanism managed to convict for culpable homicide not amounting to murder instead. The overall consequences of the s 300(*c*) problem are that the *Virsa Singh* test becomes malleable to suit the individual circumstances of each case, motive appears as a controlling factor (though now apparently corrected by *Lim Poh Lye*) and the individual facts come to assume huge importance.

43 It therefore appears that many of the cases turned (and will continue to turn) on subjective factors such as whether a dangerous weapon was used, the degree of force involved, where on the body the injury came to be inflicted and possibly whether the accused was taken by surprise. Indeed, it is entirely plausible that the accused in *Tan Cheow Bock* had thrust the knife into the deceased's mouth in the heat of the struggle, without actually intending any harm of a serious nature. In this regard, his moral culpability did not extend any farther than that of the accused in *Ow Ah Cheng*, *Tan Chee Hwee* or even *Lim Poh Lye*. Simply put, the numerous cases cannot be satisfactorily reconciled on legal principles alone. As our courts will continue to remind us, each case is different on its own facts. The judges all purport to apply Bose J's test in *Virsa Singh*, but the test has clearly been reformulated and applied in different subtle ways to reach different conclusions on different facts.

44 At the same time, it would be unrealistic to expect the courts to abandon the objective interpretation of s 300(*c*), as advocated by several

37 Particularly its second limb, s 299(2).

of my colleagues.[38] The Singapore courts' take on *Virsa Singh* (albeit now without the sting of the *Tan Joo Cheng dictum*) has always been preferred (by the Prosecution, not least) because without it, every accused person can conceivably come to court and claim that he only intended something less. This is particularly so if the judges do not carefully exclude motive – thus, "I only intended to silence the victim, or to prevent him from struggling or escaping; aye, I intended no more than that." This is the critical but unspoken fear of the courts in their consistent rejection of Lord Diplock's *dictum* in *Mohamed Yasin* (on the accused having to first intend something "of a kind" that is serious).

45 The Court of Appeal in *Lim Poh Lye*, however, has now accepted that there can be no liability if the accused only intended to cause a particular "minor injury" which would not in the normal course of nature cause death, but which in fact caused a "different injury sufficient in the ordinary course of nature to cause death".[39] In clarifying the *dictum* in *Tan Joo Cheng*, the court has effectively established that the accused must have intended to inflict a serious injury in the first instance. Liability would then follow regardless of whether the actual fatal injury approximated what the accused intended, or turned out to be something totally different but no less fatal. That the intended injury is wholly relevant is borne out by the court's clarification of a passage in *Tan Cheow Bock*, which had suggested that it was "irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict".[40] This attitude in *Tan Cheow Bock* was another unfortunate legacy of previous decisions (*Visuvanathan* and *Tan Joo Cheng*, in particular) which had sought to restrict Lord Diplock's words in *Mohamed Yasin*. In the exact words of the Court of Appeal in *Lim Poh Lye*:[41]

> We recognise that that sentence [in *Tan Cheow Bock*], viewed in isolation, could give rise to a misunderstanding as if to suggest that what injury the accused intended to inflict is wholly irrelevant. That would not be correct. Clearly, what injury the accused intended to inflict would be relevant in determining whether the actual injury caused was intended to be caused, or whether it was caused accidentally or was unintended.

38 See *eg*, Victor V Ramraj, *supra* n 5, M Sornarajah, "The Definition of Murder under the Penal Code" [1994] Sing JLS 1, and most recently Stanley Yeo, "Academic Contributions and Judicial Interpretations of Section 300(c) Murder," *Singapore Law Gazette* (April 2004) pp 21–26.

39 *Supra* n 16, at [22].

40 *Supra* n 26, at 301, [30]. In fact, it was *Visuvanathan* that first established the heresy that the intended injury was irrelevant, *supra* n 7.

41 *Supra* n 16, at [24]–[25].

46 On the very facts of *Lim Poh Lye*, the court's logic is that it was not a minor injury that was intended. Instead, the accused clearly intended the injury to the thigh, only that he did not realise the true extent and consequences of that injury. The Court of Appeal also doubted my colleague Victor Ramraj's proposal for a qualified subjective approach, which would require the accused to intend to inflict a serious bodily injury and to have some form of subjective awareness that the injury was a sort that might kill.[42] Here, the court is saying that the accused must have intended, in the first instance, to cause *some* injury serious enough to cause death in the ordinary course of nature, but that there is no requirement that he must be subjectively aware of the seriousness of the intended injury or even of the fact that the injury was of a sort that might kill.

47 In short, the seriousness of this intended injury is to be objectively determined, and not subjectively from the accused's viewpoint.[43] Moreover, this objective assessment is to be applied to the intended injury, *not* the actual injury (again, this is possible only where these are sufficiently distinct). There is no greater support for this interpretation than the textual reading of s 300(*c*) itself – "and the bodily injury *intended to be inflicted* is sufficient in the ordinary course of nature to cause death" [emphasis added]. After all, if a victim is already dead, is there any doubt that the actual injury would invariably be sufficient in the ordinary course of nature to cause death?[44]

48 In summary, the Court of Appeal's pronouncement in *Lim Poh Lye* has gone to some useful extent to blunt the injustices perpetuated by *Tan Joo Cheng* and *Visuvanathan*. It has also restored Lord Diplock's (and *Ow Ah Cheng*'s) requirement for a serious intended injury.[45] The so-called

42 *Id* at [46]–[47].

43 Of course, the problem with an objective assessment is that any kind of injury to any part of the body might be considered potentially fatal, not only injury to those parts of the body commonly regarded as vulnerable. *Lim Poh Lye*, and to a lesser extent, *Tan Cheow Bock*, exemplify this problem. There is also the question of standard – on whose objective standard does the question of seriousness rest? The Indian courts insist that the consequences that follow from an injury are to be judged, not only in the light of expert evidence, but in the light of the ordinary man's knowledge, see Sornarajah, *supra* n 38, at 14. However, in *Lim Poh Lye*, the Court of Appeal appeared reluctant to go down this path, *supra* n 16, at [40].

44 The same point is made by Ramraj, *supra* n 5, at 572.

45 The court was, however, careful to point out that it agreed with the *Visuvanathan* observation that Lord Diplock's *dictum* could not be read to suggest that the accused must know the nature of the injury he caused, see *supra* n 16, at [42]–[44]. This further strengthens the point that the seriousness of the intended injury is to be objectively (and not subjectively) determined.

"objective" approach spoken of in s 300(*c*) jurisprudence is meant to assess the seriousness of the intended injury, not so much the actual injury. Nevertheless, the characterisation of what is "minor" or "serious" and what constitutes the fatal injury remains eminently problematic. Above all, where the intended injury and actual injury cannot be easily distinguished, can it ever be satisfactorily established that "some other kind of injury" had been intended?

49 Hence, the Court of Appeal's view in *Lim Poh Lye* that there would be no liability if the accused intended one injury but in fact caused a different fatal one presupposes an ability to distinguish between the two. From the fact patterns of previous cases, this is unlikely to be easy (save perhaps for *Mohamed Yasin*). Courts will in all probability view the intended and actual injuries to be indistinguishable, particularly if Bose J's commonsensical approach were to be invoked. Looking to the future, it is doubtful that the Court of Appeal has opened a realistic door to more acquittals.

50 On the facts of *Lim Poh Lye* itself, the court characterised the stab to the thigh as being something wholly intended, with the cut to the femoral vein and subsequent bleeding being merely consequences unrealised by the accused, and not "some other kind of injury".[46] In sum, this demonstrates the artificiality in characterising just what it is that the accused intended and what the victim ultimately suffered. Even if a distance between intended and actual injuries can be discerned (and *not* by way of non-fatal motives or purposes), to hinge the argument on the width of this "moral distance" is surely unsatisfactory. It becomes too much of guesswork what this distance is – sufficiently large in *Mohamed Yasin* and *Tan Chee Hwee*, but too close in *Yacob s/o Rusmatullah* and *Tan Cheow Bock*? Does *Lim Poh Lye* lie somewhere in between, or nearer to the latter group of cases, as the Court of Appeal in *Lim Poh Lye* clearly believed?

51 At this point, we should note that the Singapore courts' interpretation of s 300(*c*) remains at variance with those rendered by superior courts in other Commonwealth countries with a similar provision in their penal books. In India, the birthplace of s 300(*c*), *Virsa Singh* has been interpreted restrictively, with the courts showing an

46 *Id* at [37], the court said that:

> To the extent that the trial judge seemed to think that the loss of blood was the "injury", he had fallen into error; the loss of blood was a consequence of the stab wounds which finally caused death.

evident discomfort with the objective approach. In particular, the judges have generally been cautious in insisting that the type of injury that caused death in the ordinary course of nature was the type of injury that the accused intended to inflict.[47] In other words, in those cases where the intended and actual injuries are not congruent, the courts have been slow to convict (unlike in Singapore).

52 For instance, in *Harjinder Singh v Delhi Administration*,[48] a case with facts almost similar to *Lim Poh Lye*'s, the Indian Supreme Court actually acquitted the accused for having stabbed the victim in the thigh and unintentionally severing the femoral artery. In essence, the court felt that the intended and actual injuries were sufficiently distinct. The Singapore Court of Appeal in *Lim Poh Lye*, however, distinguished *Harjinder Singh* on the ground that there was no proof that it was the accused's intention there to inflict the particular injury on the particular portion of the victim's thigh. In contrast, the injury to the victim's thigh in *Lim Poh Lye* was as intended by the first accused – simply put, he had meant to strike there. Again, this could be a sign that the Singapore courts will not be as quick as their Indian counterparts to discern a distinction between intended and actual injuries.

VI. Conclusion

53 Ultimately, the crux of the problem lies not with the courts, but with the wording of s 300(*c*) itself. The reality is that there can be no fully satisfactory interpretation to the provision that would avoid inconsistent outcomes in different cases. Whatever interpretation we lend to it, the provision remains antithetical to the retributivist ideal that a man should never be convicted beyond what he is morally culpable for. If he intended an injury that appears serious to the rest of the world, though not to himself, his moral culpability should in principle not approximate that of

47 Sornarajah, *supra* n 38, at 16. See also the recent Indian Supreme Court case of *Dhupa Chamar v State of Bihar* AIR 2002 SC 2834, reaffirming the cautious approach in India. The Indian courts have also bent over backwards to restrict the harshness of s 300(*c*) by opting for life imprisonment as opposed to the death penalty (the Indian courts have this choice, not available to Singapore and Malaysian courts), see Sornarajah, *id*. In Malaysia, the debate over s 300(*c*) and its proper interpretation does not appear to have arisen much. This is largely because s 300(*c*) is not relied upon by prosecutors quite to the extent that it is in Singapore. At the same time, the murder cases arising in Malaysia typically involve the accused intending to inflict an injury, and who so inflict such injury. In other words, they fall within the relatively non-controversial category of cases where the intended injury and actual injury are congruent, for all intents and purposes.

48 AIR 1968 SC 867 ("*Harjinder Singh*").

accused persons charged under the other more serious limbs of s 300 (which require intention to cause death or knowledge that death was likely).

54 In selected circumstances, one option may be to charge the accused with causing death by a rash act under s 304A. Certainly, the acts of the accused in *Tan Chee Hwee*, *Ow Ah Cheng* and arguably even *Lim Poh Lye* can be viewed as rash to the highest degree.[49] The first two are certainly unique in that there existed compelling extenuating circumstances surrounding the accused's actions. The difficulty with s 304A on homicide by rash or negligent acts is its relatively lenient punishment – imprisonment of up to two years or fine or both. There is thus a strong case for Parliament to enhance the maximum punishment for s 304A. This may perhaps encourage prosecutors to use s 304A instead, and reduce reliance on s 300(*c*), particularly in compelling cases like *Tan Chee Hwee* and *Ow Ah Cheng*.[50] In my view, this will also address the problem of courts which, being unwilling to hand out the death penalty under s 300(*c*), then devise ways to fall back on s 299 instead. The illogicality of this move has been explained above.

55 In the final analysis, the Court of Appeal's readiness in *Lim Poh Lye* to blunt the edges of *Tan Joo Cheng* and *Tan Cheow Bock* and to reinstate the requirement for a serious intended injury appears to strike a balance between the wording of s 300(*c*) and the retributivist argument. In many ways, this is as good as it gets – the best possible compromise arising out of a provision that is inherently incompatible with its sister provisions in s 300, but yet does not appear to be a priority for legislative reform. Even then, the problem of inconsistent outcomes will persist, not least because of the practical difficulty in distinguishing between "relatively minor" intended injuries and fatal actual injuries, and between intended injuries and unrealised consequences.[51] Yet, there is hope that the courts will henceforth be more willing to do so where the cases merit

49 The classical definition of "rashness" was provided in the Indian case of *Nidamarti Nagabhushanam* [1872] 7 MHC 119:

> Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening.

50 This is also the view of my colleague, Chan Wing Cheong.

51 This is exemplified by the similar facts of *Lim Poh Lye* and *Harjinder Singh*, and the two different outcomes.

it, in a manner not previously available.[52] At the same time, it is hoped that the ghosts of the old cases like *Tan Joo Cheng* and *Visuvanathan* shall remain forever exorcised.

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52 One can envisage situations like a person pricking his victim with a pin to cause him pain or to teach him a lesson, only to have the wound turn septic and fatal. A more conceivable situation would be where a person inflicts a cut on the victim, who falls over, knocks his head on the floor and dies. The door to absolve accused persons in such situations from s 300(*c*) murder must always be open.