

Case Name:
R. v. Khosa

Between
Regina, and
Harmohinder Singh Khosa

[2013] B.C.J. No. 2736

2013 BCSC 2298

2013 CarswellBC 3767

111 W.C.B. (2d) 52

Docket: 59889-2

Registry: Chilliwack

British Columbia Supreme Court
New Westminster, British Columbia

M.A. Maisonville J.

Heard: September 9-13, September 16-19, September 24,
October 10-18, 2013.

Oral judgment: November 27, 2013.

(220 paras.)

Criminal law -- Criminal Code offences -- Offences against person and reputation -- Homicide -- Second degree murder -- Trial of Khosa, charged with second degree murder -- Khosa took a knife to his sister's residence and stabbed her multiple times -- Khosa did not dispute killing his sister -- However, he suffered from paranoid schizophrenia and the central issue was whether he should be found not criminally responsible by reason of mental disorder -- The killing was not a consequence of a psychotic break with reality but was rather motivated by anger and frustration -- Khosa appreciated the nature and quality of his actions and intended to cause the death of his sister -- Khosa found guilty -- Criminal Code, s. 16.

Criminal law -- Elements of the offence -- Mens rea -- Insanity or mental disorder -- Trial of Khosa, charged with second degree murder -- Khosa took a knife to his sister's residence and stabbed her multiple times -- Khosa did not dispute killing his sister -- However, he suffered from paranoid schizophrenia and the central issue was whether he should be found not criminally responsible by reason of mental disorder -- The killing was not a consequence of a psychotic break with reality but was rather motivated by anger and frustration -- Khosa appreciated the nature and quality of his actions and intended to cause the death of his sister -- Khosa found guilty -- Criminal Code, s. 16.

Criminal law -- Defences -- Insanity or mental disorder -- Trial of Khosa, charged with second degree murder -- Khosa took a knife to his sister's residence and stabbed her multiple times -- Khosa did not dispute killing his sister -- However, he suffered from paranoid schizophrenia and the central issue was whether he should be found not criminally responsible by reason of mental disorder -- The killing was not a consequence of a psychotic break with reality but was rather motivated by anger and frustration -- Khosa appreciated the nature and quality of his actions and intended to cause the death of his sister -- Khosa found guilty -- Criminal Code, s. 16.

Trial of Khosa, charged with second degree murder. Khosa took a knife to his younger sister's residence and stabbed her in the throat area multiple times. Khosa did not dispute killing his sister. However, he suffered from paranoid schizophrenia and the central issue was whether he should be found guilty or found not criminally responsible by reason of mental disorder. The Crown took the position that, at the time of the killing, Khosa was capable of knowing both the nature and quality of his act and that what he was doing was morally and legally wrong. The Defence took the position that Khosa was delusional and suffering from a psychotic break from reality at the time of the killing.

HELD: Khosa found guilty. The Court found that the killing was not a consequence of a psychotic break with reality but was rather motivated by anger and frustration. At the time of the killing, Khosa appreciated the nature and quality of his actions and intended to cause the death of his sister. As a result, the Defence failed to establish that Khosa should be found not criminally responsible by reason of mental disorder.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B,

Criminal Code, R.S.C. 1985, c. C-46, s. 16, s. 229, s. 231, s. 655

Mental Health Act, RSBC 1996, CHAPTER 288,

Counsel:

Counsel for the Crown: S. Thomson, A. Yusuf.

Counsel for the Accused: B. Mohan, S. Kalkat.

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M.A. MAISONVILLE J. (orally):--

I. INTRODUCTION

1 On July 21, 2010 at Abbotsford, British Columbia, Harmohinder Singh Khosa killed his younger sister, Amarjit Kaur Khosa. She was then 34 years old. He was 40. The accused stabbed his sister 13 times in the throat area with a knife he had brought to her residence on Austin Avenue in Abbotsford. She attempted to protect herself and in the process suffered defensive wounds to her hands. She succumbed to blood loss from the stab wounds to her throat area.

2 In an agreed statement of facts, Mr. Khosa does not dispute killing his sister. What is in dispute and is the central issue in this trial is whether Mr. Khosa should be found guilty of the second degree murder of his sister or whether he should be found not criminally responsible by reason mental disorder pursuant to s. 16 of the *Criminal Code*, R.S.C. 1985, c. C-46.

3 The Crown, while agreeing that Mr. Khosa has, since 1996, suffered from paranoid schizophrenia, argues that at the time of killing he was capable of knowing both the nature and quality of his act and that what he was doing was wrong both morally and legally. Mr. Thomson for the Crown, therefore, submits that the accused is guilty of second degree murder.

4 Mr. Mohan, counsel for Mr. Khosa, submits that at the time of the killing in addition to suffering from the major mental disorder of paranoid schizophrenia, that Mr. Khosa was also delusional and suffering from a psychotic break from reality.

5 Mr. Khosa testified that he heard voices the day of the offence, specifically the voice of Guru Nanak Dev, the founder of Sikhism who Mr. Khosa worships as a deity. Mr. Khosa is an adherent to Sikhism.

II.

AGREED STATEMENT OF FACTS

6 Crown and defence counsel submitted an Agreed Statement of Facts which states as follows:

1) On the 21st day of July 2010 in Abbotsford British Columbia the accused Harmohinder Singh Khosa stabbed his sister Amarjit Kaur Khosa numerous times in the throat area causing her death, after she had an argument with their mother, Baljinder Khosa, whom the deceased resided with.

2) The accused and victim are siblings each of who suffer from schizophrenia.

3) The accused Harmohinder Singh Khosa has been diagnosed as a paranoid

schizophrenic and has been treated on both an in-patient and out-patient basis for this medical condition since 1996.

4) The accused Harmohinder Singh Khosa is largely unemployed and receives disability benefits as a result of his paranoid schizophrenia.

5) At the time of the offence the accused Harmohinder Singh Khosa was being treated for paranoid schizophrenia by psychiatrist Dr. Sonia Uppal.

6) At the time of the offence the accused Harmohinder Singh Khosa was taking the anti-psychotic medication Zyprexa for the treatment of his paranoid schizophrenia and anti-anxiety medication clonazepam for the treatment of his anxiety.

7) At the time of the offence the accused Harmohinder Singh Khosa was married to Charanjit Khosa and they had two children [...].

8) Jagroop Khosa is married to Harjoginder Khosa who is the younger brother of the accused Harmohinder Singh Khosa.

9) None of the family of the accused ever observed the accused Harmohinder Singh Khosa or Amarjit Kaur Khosa argue with each other.

10) None of the family of the accused ever observed the accused Harmohinder Singh Khosa be violent towards anyone.

11) The victim Amarjit Kaur Khosa had travelled to Calgary on at least two occasions alone and unbeknownst to her family.

12) The Khosa family was quite concerned about Amarjit Kaur Khosa's behaviour and mental illness. This concern included Amarjit Kaur Khosa being taken advantage of by men.

13) Jagroop Khosa observed the accused Harmohinder Singh Khosa to be caring and protective towards his younger sister Amarjit Kaur Khosa.

14) Amandeep Bhullar is the younger sister of Charanjit Kaur Khosa who is married to the accused Harmohinder Singh Khosa and that she, Amandeep Bhullar has known the accused Harmohinder Singh Khosa since 1995.

15) Amandeep Bhullar and her husband Bhanwardeep Bhullar had previously resided with the accused Harmohinder Khosa for approximately a year.

16) Amandeep Bhullar observed Harmohinder Singh Khosa spontaneously quit his job with no explanation contrary to the wishes of his family. Amandeep Bhullar also expressed that the accused took a trip to India without telling his family the reason for the trip.

17) Amandeep Bhullar observed that on July 21, 2010 the accused Harmohinder Singh Khosa was extremely quiet.

18) Amandeep Bhullar attributed the silence he observed on the part of Mr. Harmohinder Singh Khosa on July 21, 2010 to what he believed to be his illness.

19) Amandeep Bhullar observed that the accused Harmohinder Khosa had a protective, loving and a caring relationship towards his sister Amarjit Kaur Khosa.

20) Bhanwardeep Bhullar is married to Amandeep Bhullar.

21) Bhanwardeep Bhullar's father is the brother of Baljinder Khosa, who is the accused Harmohinder Singh Khosa's mother, and thus Bhanwardeep Bhullar is the accused Harmohinder Singh Khosa's first cousin.

22) Bhanwardeep Bhullar observed that the accused Harmohinder Singh Khosa took a leadership role in the Khosa family after the accused Harmohinder Singh Khosa's and Amarjit Kaur Khosa's father passed away.

23) Bhanwardeep Bhullar observed that the accused Harmohinder Singh Khosa acted in a loving manner towards his sister Amarjit Kaur Khosa and took care of her and her needs, including purchasing items for her and facilitating her access to medical treatment.

24) Bhanwardeep Bhullar observed that the accused Harmohinder Singh Khosa helped arrange the marriage of his sister Amarjit Kaur Khosa.

25) Bhanwardeep Bhullar from the behaviour and appearance of the accused, lead him to believe that Mr. Harmohinder Singh Khosa was very worried about Amarjit Kaur Khosa's divorce.

26) Bhanwardeep Bhullar has observed the accused Harmohinder Singh Khosa talking to himself on numerous occasions.

27) Bhanwardeep Bhullar observed the accused Harmohinder Khosa appearing to talk to himself on July 21, 2010.

28) Bhanwardeep Bhullar has observed the accused Harmohinder Singh Khosa speaking to Images of Guru Nanak; to which Mr. Bhullar attributed to his illness.

29) Baljinder Khosa is the mother of both the accused Harmohinder Singh Khosa and the victim Amarjit Kaur Khosa. She observed that the accused Harmohinder Khosa was loving and caring towards his sister Amarjit Kaur Khosa and that "he did everything for her".

30) Baljinder Khosa observed that Amarjit Kaur Khosa had run away to Calgary on at least one occasion.

31) Baljinder Khosa observed that Harmohinder Singh Khosa did not appear angry when he transported her to the Sorrento Residence after she (Baljinder Khosa) had an argument with Amarjit Kaur Khosa at 32153 Austin Avenue, Abbotsford, British Columbia (hereafter referred to as the "Austin Residence")

on July 21, 2010.

32) Baljinder Khosa observed that on July 21, 2010 the accused Harmohinder Singh Khosa was quiet and was talking to himself which she attributed to his illness.

33) The female victim, Amarjit Kaur Khosa resided with her mother Baljinder Kaur Khosa at the Austin residence, and due to her schizophrenia was unable to work.

34) On July 21, 2010, Harmohinder Singh Khosa received a call from Jagroop Khosa to take his mother, Baljinder Kaur Khosa, to his residence at 32133 Sorrento Avenue, Abbotsford, British Columbia(hereafter referred to as "the Sorrento Residence"), as Amarjit Kaur Khosa was behaving in a verbally abusive manner towards his mother at the Austin residence.

35) After receiving the call from his mother Baljinder Kaur Khosa, Harmohinder Singh Khosa attended the Austin Residence and picked up his mother and drove her to the Sorrento Residence.

36) Once Baljinder Kaur Khosa was at Harmohinder Singh Khosa's house, Amarjit Kaur Khosa began calling demanding to know when Baljinder Kaur Khosa, the mother, would be returning to the Austin Residence.

37) Amarjit Kaur Khosa called on numerous occasions and after one such call the accused took a steak knife from his kitchen drawer, drove over to the Austin Residence, confronted her and repeatedly stabbed her about the neck.

38) Amarjit Kaur Khosa died shortly after as a result of blood loss due to the stab wounds inflicted by the accused.

39) Harmohinder Singh Khosa returned to the Sorrento Residence, and cleaned the knife and his clothing.

40) On July 23, 2010 an autopsy was conducted on the victim Amarjit Kaur Khosa by Dr. David Charlesworth a Forensic Pathologist. A *curriculum vitae* of Dr. Charlesworth [was] attached as appendix 1 [to the Agreed Statement of Facts] and accurately set out the professional qualifications of Dr. Charlesworth. Dr. Charlesworth conducted an autopsy and produced an Autopsy report, attached to [the] Agreed Statement of Facts and marked as appendix 2, and it [was] agreed that [that] report accurately [set out] the autopsy, photographs of the injuries and the opinions of Dr. Charlesworth.

41) The body of Amarjit Kaur Khosa was discovered by her family and the Abbotsford police were notified. Photographs of the scene were taken by the Abbotsford police and a binder containing those photographs [was] attached to [the] Agreed Statement of Facts and marked as appendix 3 and it [was] agreed that those photographs fairly and accurately [depicted] the scene as observed by the Abbotsford Police on July 21 and 22, 2010.

42) Photographs of the Austin Residence and the Sorrento Residence were obtained by the Abbotsford Police. In addition, the Abbotsford police produced maps of the area surrounding the two above noted residences in both a map view and satellite view. Copies of these four pages [were] attached to [the] Agreed Statement of Facts and marked as appendix 4. It [was] agreed that they fairly and accurately [portrayed] the two residences and the area around them.

43) The police searched both the Sorrento Residence and the Austin Residence and at the Sorrento Residence they seized a black handled steak knife. It [was] agreed that this same knife was filed at the preliminary inquiry of this matter and marked as exhibit 26. [That] steak knife [was] referred to as appendix 5 to [the] Agreed Statement of Facts. It [was] further agreed that [that] steak knife was the knife used by the accused to kill the victim on July 21, 2010.

44) Harmohinder Singh Khosa was questioned by the police on three occasions.

45) The first occasion Harmohinder Singh Khosa spoke to police was the evening of July 22, 2010. He denied being present and having any part in the homicide of Amarjit Kaur Khosa. This interview was video recorded and an accurate recording of that interview [was] attached as appendix 6 to [the] Agreed Statement of Facts. A transcript of this interview was produced and a copy of that

[was] attached to [the] Agreed Statement of Facts and marked as appendix 7. It is agreed that both the video recording and the transcript accurately [reflected] the interview by the police on July 22, 2010. It [was] further agreed that this statement was voluntary.

46) Harmohinder Singh Khosa approached the police on July 28, 2010 and gave a warned and cautioned statement admitting to killing Amarjit Kaur Khosa stating that his conscience was bothering him. This statement was video recorded and an accurate recording of that interview [was] attached as appendix 8 to [the] Agreed Statement of Facts. The majority of [that] interview took place in Punjabi. A transcript was produced of this interview translating it into English a copy of that is attached to [the] Agreed Statement of Facts and marked as appendix 9. It [was] agreed that the English transcript and the video recording accurately [reflected] the interview of July 28, 2010. It [was] further agreed that this statement was voluntary.

47) On March 9, 2011, Harmohinder Singh Khosa was arrested for the murder of Amarjit Kaur Khosa, was provided access to counsel, and provided a warned and cautioned statement admitting to killing the victim Amarjit Kaur Khosa. This statement was video recorded and an accurate recording of that interview [was] attached as appendix 10 to [the] Agreed Statement of Facts. The majority of [that] interview took place in Punjabi. A transcript was produced of [that] interview translating it into English and a copy of that [was] attached to [the] Agreed Statement of Facts and marked as appendix 11. It [was] agreed that the English transcript and the video recording accurately [reflected] the interview of March 9, 2011. It [was] further agreed that this statement was voluntary.

III.

AUTOPSY REPORT

7 The autopsy report together with the *curriculum vitae* of Dr. David Charlesworth and the photographs of the victim were tendered into evidence by agreement between counsel as noted above. Dr. Charlesworth is a medical doctor and a forensic pathologist.

8 The report and photographs disclose a brutal attack with multiple stab wounds to the victim's neck and left cheek. The victim's carotid artery was transected and there was a partial transection to the right internal jugular vein. Stab wounds were sustained to her epiglottis, trachea, and pharynx. There was an incised wound to her laryngeal cartilage. She had aspirated blood into both her lungs. She had multiple defensive incised wounds to both hands. Dr. Charlesworth noted 13 stab wounds

to the head and neck area alone.

IV.

STATEMENTS OF THE ACCUSED TO THE POLICE

9 As noted in the Agreed Statement of Facts, on three separate occasions, July 22, 2010, July 28, 2010 and March 9, 2011, Mr. Khosa spoke with the police. As noted the voluntariness and the admissibility of these statements were not in issue. On the first occasion, the interview was conducted in English. At the second and third interviews, Punjabi was primarily spoken.

(a) July 22, 2010

10 Mr. Khosa was interviewed by Detective Nahal on July 22, 2010. Mr. Khosa's first language is Punjabi however the interview was conducted in English. In the interview, Mr. Khosa indicated that he had over-medicated himself that day to help with his anxiety. He denied having anything to do with the killing of his sister. He indicated he went to Temple two times the day of the offence; in the morning and again at 5:30 p.m. and had driven himself both times. Mr. Khosa told Detective Nahal that when he returned from the Temple the second time, his mother-in-law, father-in-law and his children were home but his wife was not there. He said in his first interview that he could not recall when he learned about what had happened to Amarjit Khosa but he thought that he learned when he phoned Amandeep, his wife's sister.

11 Detective Nahal asked Mr. Khosa if Amarjit Khosa ever hit his mother to which he answered yes.

12 Mr. Khosa told Detective Nahal that his sister-in-law, Jagroop Khosa, had called him that day. She needed him to go pick up his mother from the house and take her back to his home to be away from his sister, Amarjit Khosa. So Mr. Khosa said he went to pick up his mother and then brought her to his house. He stated that, on his return with his mother, his wife was still there, but only for a short while until she had to leave at 5:00 o'clock for her work at a fast food restaurant.

13 Mr. Khosa indicated to Detective Nahal that his mother had tried to phone Amarjit Khosa but that Amarjit Khosa did not answer the phone, instead he said someone else answered the phone and his mother became concerned. He said that he phoned his wife who came home and she and his mother went to Amarjit Khosa's residence. He meanwhile went to the Temple.

14 During this first interview with Detective Nahal, Mr. Khosa surrendered the clothing that he was wearing. However, he did not want to call Legal Aid. Photographs were taken of his hands and face and his hands were swabbed. Photographs were also taken of his feet and his shoes were taken from him when he was picked up by the police from his home to be taken to the Detachment. He informed the officer that they were his shoes. He had worn them all that day and no one else had worn them.

(b) July 28, 2010

15 As noted in the Agreed Statement of Facts within days after the first interview, Mr. Khosa contacted the police in order to give a second statement. At this time he was staying at the Community Residential Emergency Short Stay Treatment Centre ("CRESST"). He indicated to the facility that he was going to take a leave to go home for a visit. He had not been certified under the *Mental Health Act*, R.S.B.C. 1996, c. 288, to go to CRESST. He was there because he wished to be. He was accordingly free to leave.

16 This time the interview was conducted in the Punjabi language. Mr. Khosa was provided his *Charter* rights and warned and he was told that he could leave at any time. He was told that he was not under arrest nor was he going to be arrested that day. As noted, the statements are in evidence by consent.

17 At the outset, Corporal Bho Dhaliwal chatted with Mr. Khosa about his religion. Mr. Khosa indicated that he had just begun, two months previous, practicing as a full Sikh. This included not shaving, not cutting his hair, wearing a turban and praying. During the course of the interview, Corporal Dhaliwal did advise Mr. Khosa that the interview was being recorded and that if the matter went to court it would be heard. Mr. Khosa confirmed he was there freely and voluntarily.

18 Mr. Khosa stated that he first immigrated to Toronto where he stayed for six months. There he worked at a plastics factory before moving to Abbotsford in 1991. In Abbotsford he held jobs working with top soil and as a janitor. In the course of the interview with Corporal Dhaliwal, Mr. Khosa said the following:

Mr. Khosa: And now like, I'm admitted in [CRESST]. I have told them there that I'm going home. Like I had a burden on my conscience like, in my head.

Cpl. Dhaliwal: Okay.

Mr. Khosa: I - my burden wouldn't let me rest.

Cpl. Dhaliwal: Okay.

Mr. Khosa: And that I'm sitting here. It's because I am guilty. I didn't call Legal Aid or anyone else. And I said, I'm not going to do this thing that I'm going to go to,

I'm going to go to the police station to tell. And I lied at the [CRESST] and home, I came home from the [CRESST].

This statement was made in Punjabi.

19 Later in the course of the statement, Corporal Dhaliwal says:

Cpl. Dhaliwal: Oh, okay, okay. So, you thought in your mind that I, myself am going to say to them that.

Mr. Khosa: Like I, it wasn't settling well with my mind.

Cpl. Dhaliwal: Okay.

Mr. Khosa: That I, that I made a mistake.

Cpl. Dhaliwal: Oh, okay.

Mr. Khosa: Like our inner conscience.

Cpl. Dhaliwal: Yes.

Mr. Khosa: Our conscience doesn't let us rest.

Cpl. Dhaliwal: Yes.

Mr. Khosa: When we do a wrong thing.

Cpl. Dhaliwal: Yes.

Mr. Khosa: My conscience wouldn't let me rest.

Cpl. Dhaliwal: Okay.

Mr. Khosa: Then I told them that.

Cpl. Dhaliwal: Oh, okay, okay.

Mr. Khosa: No, didn't talk about anything.

Cpl. Dhaliwal: That's it? [In reference to the killing].

Mr. Khosa: Nothing.

Cpl. Dhaliwal: You just took the knife out at that time?

Mr. Khosa: At that time.

Cpl. Dhaliwal: But you didn't stop yourself. That it has been this much time - that I should not do this.

Mr. Khosa: No, I told you my brain didn't know anything. What I was going to do, what I was not going to do. I didn't understand anything.

Cpl. Dhaliwal: But your brain was working then when you thought that "I am going to kill her".

Mr. Khosa: No, I couldn't understand anything about what happened - what didn't happen.

Cpl. Dhaliwal: No, no.

Mr. Khosa: Yes.

Cpl. Dhaliwal: Like you told me before.

Mr. Khosa: It did come to my mind to kill her.

Cpl. Dhaliwal: In the mind that "I am going to kill her".

Mr. Khosa: Yes.

Cpl. Dhaliwal: You thought with your mind that you told me that right?

Mr. Khosa: Yes.

Cpl. Dhaliwal: That after that in your mind you had that "I am going to drive my car there".

Mr. Khosa: Yes, yes.

Cpl. Dhaliwal: That "I am going to kill her today".

Mr. Khosa: Yes.

Cpl. Dhaliwal: Is that right?

Mr. Khosa: Yes, yes.

Cpl. Dhaliwal: Okay, your mind did not understand then when you killed her?

Mr. Khosa: Yes.

Cpl. Dhaliwal: Is that right?

Mr. Khosa: Yes.

Cpl. Dhaliwal: Is that right?

Mr. Khosa: Yes.

Cpl. Dhaliwal: But before killing her your brain was working.

Mr. Khosa: No - yes, it was in my mind then.

Cpl. Dhaliwal: Oh, okay.

Mr. Khosa: It did come to my mind.

Cpl. Dhaliwal: Okay, but I - I guess when she becomes like this -

Mr. Khosa: Yes.

Cpl. Dhaliwal: - um, she did this before. She phones at night at 11:00 o'clock.

Mr. Khosa: Yes.

Cpl. Dhaliwal: A person becomes disturbed.

Mr. Khosa: Yes.

Cpl. Dhaliwal: Is that what happened?

Mr. Khosa: Yes.

Cpl. Dhaliwal: Okay. If today we say - like we were to turn back the time on the clock -

Mr. Khosa: Mm-hmm.

Cpl. Dhaliwal: - a week.

Mr. Khosa: Mm-hmm.

Cpl. Dhaliwal: Would you do that again?

Mr. Khosa: No.

Cpl. Dhaliwal: No? Okay.

This part was mainly spoken in Punjabi; however, occasional English words were used.

20 When asked about this exchange in cross-examination, Mr. Khosa conceded that he regretted killing his sister.

21 Mr. Khosa next described to the Corporal how he had stabbed his sister and continued to stab her when she was on the ground.

22 Mr. Khosa then stated:

Mr. Khosa: Thank you, you fulfilled your promise.

Cpl. Dhaliwal: No, no, no, no problems. Thank you very much for coming.

Mr. Khosa: My conscience was not good.

Cpl. Dhaliwal: Okay.

Mr. Khosa: My conscience had a burden.

This exchange was in Punjabi.

(c) March 9, 2011

23 A third interview was held with Corporal Baljinder Brach. This interview occurred following Mr. Khosa's arrest for the murder of Amarjit Khosa. Mr. Khosa stated that his soul was "troubled" by the killing. He told Corporal Brach that "his mind was not at peace". Corporal Brach, in response to Mr. Khosa's reply that his "trouble" had increased since the murder of his sister, and was increasing before the offence as well, suggested to him his trouble was more from the what he termed the "mistake":

Cpl. Brach: The mistake that occurred -

Mr. Khosa: Yes.

Cpl. Brach: - like that must have affected you too.

Mr. Khosa: Yes, that has affected too.

Cpl. Brach: Now in regards to that. Do you think about that thing or do you want to take it outside of your head?

Mr. Khosa: No, I think - I do think about it.

Cpl. Brach: When you think about it, what do you think about?

Mr. Khosa: Like why did this thing happen.

Cpl. Brach: That it is not a good thing?

Mr. Khosa: Yes.

Cpl. Brach: Then what does your soul say to you?

Mr. Khosa: It should not have happened.

Cpl. Brach: No, but that situation did occur.

Mr. Khosa: Yes.

Cpl. Brach: You must pray to God too.

Mr. Khosa: Yes.

Cpl. Brach: You must say to God that I - uh-

Mr. Khosa: Made a mistake.

Cpl. Brach: -a good thing did not happen.

Mr. Khosa: Yes.

24 The statement carried on with Corporal Brach stating:

Cpl. Brach: But now if you think about it. When you killed Pinky [the deceased's nickname] -

Mr. Khosa: Yes.

Cpl. Brach: You killed her because of what she was saying to your mother. You did not get enjoyment from killing her.

Mr. Khosa: Yes...

Cpl. Brach: Sorry?

Mr. Khosa: Enjoyment of what?

Cpl. Brach: You did not get enjoyment from this situation.

Mr. Khosa: No.

Cpl. Brach: This situation is not like that.

Mr. Khosa: Yes.

Cpl. Brach: This situation must have occurred because of anger.

Mr. Khosa: Yes, it occurred in anger.

Cpl. Brach: This - like you're saying it occurred in anger.

Mr. Khosa: Yes.

Cpl. Brach: Is it not this that four to five months earlier you thought I'm going to do this?

Mr. Khosa: No, I did not think about it.

Cpl. Brach: It was just because you got angry all of a sudden.

Mr. Khosa: I got angry all of a sudden.

Cpl. Brach: What you had heard that you -

Mr. Khosa: She used to say when I used to phone - phone my mommy. She used to say "It's your boyfriend's phone".

Cpl. Brach: That's a really bad thing.

Mr. Khosa: Yes.

Cpl. Brach: This - this - I can say this much, hearing that would get me angry too.

Mr. Khosa: Yes. And what else, what else... mommy is -

Cpl. Brach: Okay, what else she said your boyfriend has phoned.

Mr. Khosa: Yes.

Cpl. Brach: But -

Mr. Khosa: She used to say things like that.

Cpl. Brach: What else did she say, 'cause I have -

Mr. Khosa: Your phone call -

Cpl. Brach: - been told -

Mr. Khosa: - has come. It's the old man. She used to say things like that a lot.

Cpl. Brach: Mm-hmm. She must have beat your mother too.

Mr. Khosa: She used to beat her. She used to phone her at eleven o'clock - eleven o'clock at night. She used to go to Calgary from - in a bus.

Cpl. Brach: What was she going to do there?

Mr. Khosa: Just because.

Cpl. Brach: She used to go to Calgary and then you - then your mother would say to you to find out what happened.

Mr. Khosa: Where she is gone, yes.

Cpl. Brach: So you used to have a lot of pressure on you. Stress.

Mr. Khosa: There was pressure ... Then we used to admit her into [CRESST], [CRESST]. When we used to go to the hospital and get her admitted in, she would say I want to go home. At home she would say I want to go there. Then they kept her in [CRESST] and at [CRESST] she would cause problems too, she would not stay there either. And then they kept her there, in White Rock and she did not stay there.

Cpl. Brach: Mm-hmm.

Mr. Khosa: And then she took a taxi and came back home again.

Cpl. Brach: Mm-hmm.

Mr. Khosa: She would not stay anywhere.

Cpl. Brach: Yes, that is very difficult.

Mr. Khosa: Yes, she would not stay anywhere -

Cpl. Brach: Yes, yes.

Mr. Khosa: - comfortably. She used to irritate. That's it.

Cpl. Brach: So the irritation to you, your wife must get fed up too.

Mr. Khosa: Yes.

Cpl. Brach: When the phone calls would come at night.

Mr. Khosa: Yes.

Cpl. Brach: She would knock on your door.

Mr. Khosa: Yes.

Cpl. Brach: She must be causing problems in your house too then?

Mr. Khosa: Yes, there would be problems. I could not work.

Cpl. Brach: In these kind of circumstances any person would get fed up.

Mr. Khosa: Yes.

Cpl. Brach: This, when I hear this-

Mr. Khosa: Yes.

Cpl. Brach: - that is she used to say boy - dirty things to your mother.

Mr. Khosa: Yes.

Cpl. Brach: She used to beat her.

Mr. Khosa: Yes.

Cpl. Brach: She would come to your house and knock on the door.

Mr. Khosa: Yes.

Cpl. Brach: Then the day you killed her -

Mr. Khosa: Yes.

Cpl. Brach: - then all of a sudden these situations must have come into your head or how
-

Mr. Khosa: All of a sudden all the situations came in the head.

Cpl. Brach: Then then when the situations came into your head.

Mr. Khosa: Yes.

Cpl. Brach: then you, then when uh, - then what did you do when it came into your head?
did you drive your vehicle to Pinky's house?

Mr. Khosa: Yes.

Cpl. Brach: Then what happened?

Mr. Khosa: Then it happened from me a mistake.

Cpl. Brach: Now, when you made a mistake -

Mr. Khosa: Yes.

Cpl. Brach: - did you shoot or -

Mr. Khosa: No it-

Cpl. Brach: What did you do?

Mr. Khosa: Was a knife.

Cpl. Brach: Okay, what did you do with the knife?

Mr. Khosa: I stabbed her with it.

Cpl. Brach: Pinky?

Mr. Khosa: Yes.

Cpl. Brach: How many times? Do you remember?

Mr. Khosa: I stabbed two, three times.

This statement was mainly in Punjabi; however, the occasional English word was used.

25 In this interview with Corporal Brach, Mr. Khosa also described what had occurred following the killing of his sister. Mr. Khosa stated that he concealed the knife, walked quickly to his car, and when he arrived at his house he went to the laundry room, cleaned the knife, returned it to the drawer in the kitchen and then went to the laundry and washed his jacket.

V. TESTIMONY OF ACCUSED'S FAMILY

(a) Jagroop Khosa

26 The accused's sister-in-law Jagroop Khosa testified that she had been to the residence where Mr. Khosa's mother lived with her daughter, Mr. Khosa's sister, Amarjit Khosa, to pick up her child and another child family member who were briefly being looked after there.

27 Jagroop Khosa testified that Mr. Khosa's mother asked to be picked up and taken away from Amarjit Khosa.

(b) Amarjit Bhullar

28 Amarjit Bhullar also testified at the trial. She is the sister of the accused's wife. She is aware of his illness, his schizophrenia. She saw him on July 21, 2010 and testified that he was more quiet than usual. She indicated that in the past Mr. Khosa had been preoccupied with his sister's divorce. She was aware that he heard voices and that he talked to her about that in the past.

(c) Charanjit Khosa

29 Charanjit Khosa, the accused's wife, also gave evidence and was called as a witness. She testified about helping Mr. Khosa out in his work as he would not have been able to do so alone.

30 She described to the Court how in their living room they have a picture of Guru Nanak Dev and that back in approximately 2000-2001 she saw her husband spitting on that picture. She is aware that in the months preceding the trial that Mr. Khosa had endeavoured to become a better adherent to the tenets by ceasing to shave and wearing a turban.

31 Charanjit Khosa described the onset of Mr. Khosa's illness to the Court and how he thought that a plan had been hatched to take her from him and that someone else had been trying to poison him. Since that time, she testified that Mr. Khosa was a good husband, a gentleman, and helps out whenever he is asked and drops the children off at school.

32 Charanjit Khosa also testified about Amarjit Khosa's behaviour of leaving to go to Calgary in a situation where she did not tell the family. She also spoke about Amarjit Khosa being divorced and she discussed the fact that Amarjit Khosa had developed schizophrenia and was upset and angry with everyone. She explained to the Court that Mr. Khosa was the only one that took responsibility

for Amarjit Khosa. The other siblings would just ignore Amarjit Khosa and did not take responsibility for her.

(d) Baljinder Kaur Khosa

33 Baljinder Khosa, the accused's mother, had testified at the preliminary hearing in this matter which was held on January 11, 2012. At the time of trial, she suffered from tuberculosis and accordingly an order was made that her evidence could be read in at trial.

34 Baljinder Khosa had testified about the death of her husband in India in 1994 following the riots after the assassination of Indira Gandhi. She testified that Amarjit Khosa had married in 1997 and that the marriage had ended in 1997-1998. She stated that it was after the marriage ended that Amarjit Khosa became ill with schizophrenia. Initially in her evidence Baljinder Khosa did not refer to it as schizophrenia but rather that she was unable to figure out what was going on and that they began to fight.

35 Baljinder Khosa testified that two years after the breakdown of Amarjit Khosa's marriage, Amarjit Khosa and her mother began to live together. She testified that Amarjit Khosa was under the care of Dr. Sonia Uppal and that she took medication for her illness. As Amarjit Khosa's illness progressed, she began to hit her mother on occasion.

36 Baljinder Khosa stated that in response to Amarjit Khosa's past outbursts, "they", which I infer to be the family, but primarily her and Mr. Khosa, would drop Amarjit Khosa off at the hospital or call her doctor.

37 Baljinder Khosa said that she knew that her son, Mr. Khosa, suffered from the same illness as Amarjit Khosa and a doctor had told her that the name of the illness was schizophrenia.

38 Baljinder Khosa stated that nothing had happened at her home the morning of the offence and that everything was normal on that morning. She stated that Amarjit Khosa had gone out of the home the morning of the offence, and she came back and had a shower. They were getting along normally that afternoon. Then Jagroop dropped off the children. She testified that Amarjit Khosa began behaving more aggressively towards her that afternoon. She said she went out to the garage because she was afraid that Amarjit Khosa was going to hit her.

39 Baljinder Khosa stated that Mr. Khosa came to get her although she did not know how that occurred or who had phoned Mr. Khosa to come and pick her up. When she arrived at Mr. Khosa's house, Baljinder Khosa said that he was talking to himself. She herself had a headache so she took some medication and went to lie down and did not speak much to Mr. Khosa. She stated that she then went to lie down for approximately an hour and a half.

40 When Baljinder Khosa got up, there was no one in the house. She testified that Mr. Khosa's wife, Charanjit, came home and that she wanted to go and check on Amarjit Khosa. She stated that

she attended on Amarjit Khosa's residence with Bhanwardeep Bhullar and his wife Amandeep Bhullar and they found Amarjit Khosa dead.

VI.

PSYCHIATRIC EVIDENCE

(a) Dr. Rakesh Lamba

41 Dr. Lamba was called in as the expert in the area of forensic and general psychiatry by the Crown. He had provided two written reports, one dated November 5, 2010, prior to Dr. Lamba having interviewed Mr. Khosa, and one dated September 1, 2013 following an interview with Mr. Khosa.

42 Dr. Lamba had significant experience in forensic psychiatry, including the Forensic Psychiatric Services of Surrey-Fraser Valley Outpatient Forensic Clinic through which patients are discharged from the Forensic Psychiatric Hospital under the direction of the Review Board. He testified that he had completed a number of "Not Criminally Responsible by Reason of Mental Disorder" reports over the years.

43 Dr. Lamba indicated that he wrote his reports from the point of view of trying to ascertain whether a person who committed an act or omission suffers from a mental disorder as defined by the *Criminal Code* and whether by virtue of that mental disorder they were able to appreciate the nature and quality of their act or know that the offence was wrong.

44 Dr. Lamba stated that his task is to understand the symptoms, their severity and their pattern in any given case. He reviews collateral information as well as information from the individual. Upon arriving at a clear picture of the individual's illness, Dr. Lamba then reviews the very specific incident or charge that is under assessment.

45 He reviewed the records here of Dr. Sonia Uppal, Mr. Khosa's psychiatrist, as well as the records of Dr. Bawa Randhawa, Mr. Khosa's family doctor with a particular focus on the dates which immediately preceded the event. He stated that this was a necessary part of assessing an individual's mind at the time of an offence.

46 According to Dr. Lamba, Dr. Randhawa had written the following note in Mr. Khosa's file on June 3, 2010: "Stable schizophrenia; less anxiety". That date corresponded with "a decrease in clonazepam to one milligram twice a day". Dr. Lamba felt that that entry was important and represented that Mr. Khosa was acting consistently with his baseline mental state or "maybe even better" on his review of the progress note in the Mental Health Centre.

47 A further entry on June 25, 2010 indicated there had been a decrease in Mr. Khosa's anxiety

and then on July 11, ten days prior to the incident, Dr. Randhawa had made an entry in his record regarding Mr. Khosa stating: "he is doing much better. He's stable and he's working".

48 Dr. Lamba was asked by Crown counsel about Mr. Khosa's ability to function on a spectrum. Dr. Lamba replied he would place Mr. Khosa higher than the middle of the spectrum, more towards the upper range of functioning. This placement was in light of Mr. Khosa's current circumstances, that is, he has a stable marriage, owns a house, drives, and is able to work, even though Dr. Lamba recognizes that it is quite sheltered and unskilled work and for only two hours a day with the assistance of his wife.

49 Dr. Lamba indicated in his evidence that the typical course of schizophrenia is that it waxes and wanes. According to Dr. Lamba, Mr. Khosa had not spent a large amount of time in the acute stages of schizophrenia. The onset of schizophrenia for Mr. Khosa occurred in 1996 and he has only been hospitalized once in the early stages. This lack of hospitalization, apart from at the onset of his illness, was another reason why Dr. Lamba placed Mr. Khosa on the higher end of the spectrum with regard to his ability to function.

50 Dr. Lamba understood from Mr. Khosa's records and history that when his illness came on, it did so very forcibly and in a dramatic manner. Mr. Khosa suffered from religious delusions in addition to delusions of persecution. Dr. Lamba described Mr. Khosa's experience of believing that he had snakes crawling on his legs as a somatic delusion, that is, a delusion which describes a bodily feeling. Dr. Lamba used the term "religious delusions" because, as part of Mr. Khosa's initial onset, Mr. Khosa also believed he was given special powers by God.

51 According to Dr. Lamba, at the onset of his illness in 1996, Mr. Khosa had spoken about his in-laws and cousins conspiring against him. Mr. Khosa heard voices, i.e. auditory hallucinations in the form of a voice that he recognized as his cousin's; a voice that was swearing at him. Mr. Khosa also described a conspiracy to Dr. Lamba, one concocted to bring his wife into Canada and that there was a woman in India who had managed to poison his drink. According to Dr. Lamba, these delusions led to a diagnosis of schizophrenia. Dr. Lamba did not believe that Mr. Khosa ever again reached the same acute state of illness as he had experienced in the initial onset. Rather, Mr. Khosa fluctuated from a baseline to a more aggravated condition.

52 According to Dr. Lamba, when Mr. Khosa is in the more aggravated stages of his illness, he becomes preoccupied with religious ideas and exhibits irritability while expressing religious themes. In most circumstances Mr. Khosa believes he is getting messages from the gods and expresses unhappiness with what he perceives God has done or will do.

53 Dr. Lamba clarified in his testimony that the above description was what he meant by religious delusions with respect to Mr. Khosa. In his acute stage, Mr. Khosa also believed that he had special powers given to him by Guru Nanak Dev, what Dr. Lamba called grandiose delusions. He was also paranoid about the spirits of dead people. Dr. Lamba had not seen these sorts of symptoms in the medical reports or entries since 2007.

54 In his review of the records of Mr. Khosa, Dr. Lamba noted that the last time Mr. Khosa was recorded as having a significant relapse of symptoms or suffered acute symptoms was in August of 2007. A note on August 13, 2007 stated that Mr. Khosa's mental state had been deteriorating for about one week. He appeared preoccupied and had difficulty paying attention. He denied visual hallucinations. He had limited insight into his condition. Mr. Khosa's wife provided collateral history that he had been spitting on and talking to religious pictures. However, this episode of deterioration in his mental state was managed successfully in a matter of days by adjusting his medication.

55 Dr. Lamba stated that it was unlikely that a person suffering from paranoid schizophrenia would go from a stable baseline to psychotic then back to baseline in a matter of hours or even days.

56 Based on his review of all the records, Dr. Lamba was of the opinion that Mr. Khosa was at his baseline prior to the event and when interviewed by the police hours after the event, including even having had enough insight into his illness to take extra medication.

57 Dr. Sonia Uppal had seen Mr. Khosa on June 17, 2010 and her entry indicated that there was no paranoia, no irritability and no hallucinations. Dr. Lamba repeated in his evidence the note of Dr. Uppal in which she recommended a decrease in his clonazepam to one milligram once a day.

58 As Dr. Lamba stated in evidence:

And I would say that, in general, if the pre- and post-mental states were not very vastly different to each other and his baseline, it becomes hard to imagine or to - to consider, barring any other information that might be available, that his mental state at the very time [of the offence] would have been any different.

59 According to Dr. Lamba, Mr. Khosa manifests more negative symptoms of paranoid schizophrenia in his baseline state. These negative symptoms include what was referred to as "poverty of thought", which means that the mind is blank or close to blank. It is related to poverty of speech, where one is quiet, lost, or just sitting there. There can be an avolition component as well; a poverty of motivation where one is unmotivated.

60 When Mr. Khosa's mental state starts to deteriorate, according to Dr. Lamba, it commences with him becoming more preoccupied with religion and hearing voices encouraging him to go to the Gurdwara. Dr. Lamba states that Mr. Khosa's positive symptoms are his hallucinations and hearing the voice of Guru Nanak Dev.

61 When testifying about his interview with Mr. Khosa, Dr. Lamba said that the voices Mr. Khosa heard have to do normally with his routine day-to-day situation, what he is doing at the time or the situation he is dealing with. Dr. Lamba stated that he pressed Mr. Khosa for concrete examples and was told that Mr. Khosa hears voices in keeping with the situation he is facing. So for example, if his wife and children go out and he begins to worry, the voice will reassure Mr. Khosa

and say to him that his wife and children are all right and will return in time.

62 According to Dr. Lamba, when asked for clarification of whether there is a distinct voice he heard or whether it was internal dialogue, Mr. Khosa described the voice as being a bit of both, and that the voice he generally hears is that of Guru Nanak Dev. This voice was described to Dr. Lamba by Mr. Khosa as being benevolent, reassuring, and making Mr. Khosa feel blessed.

63 Dr. Lamba noted that in Mr. Khosa's case there is a predictable stable pattern to his illness and that all the fundamental things that he attributes to his illness have a religious aspect to them. For example, Mr. Khosa went to India to get relief from what he is experiencing and to seek a cure for his illness.

64 Dr. Lamba testified it has never been the case that Mr. Khosa has focussed on an individual in a delusional manner following the first onset of his paranoid schizophrenia. Furthermore, at no point has there been any indication of any negative focus on the part of Mr. Khosa towards his deceased sister, Amarjit Khosa.

65 Dr. Lamba found that Mr. Khosa had insight into his own condition. After the initial onset, there were only brief times when Mr. Khosa lost insight such as when he spat on the picture of Guru Nanak and when he quit his job in response to hearing a voice that he attributed to Guru Nanak telling him that there would be money from another source. Apart from those instances, Dr. Lamba testified that Mr. Khosa maintained relatively good insight into his condition.

66 Dr. Lamba related that Mr. Khosa knows when something is going wrong and he is able to take more medication, which Dr. Lamba referred to as self-monitoring. Dr. Lamba gave examples of his self-monitoring such as when Mr. Khosa would voluntarily attend upon his physicians and indicate that he was feeling more anxious. Similarly, before Mr. Khosa was interviewed by the police he took extra medication and attributed the reason for doing that to his anxiety. Dr. Lamba indicated that such action would be an example of a person who had insight into their illness and demonstrated their ability to address it appropriately.

67 Dr. Lamba also reviewed the concept of a command hallucination. He indicated that it is hearing a voice that tells you to do something and added: "I would further qualify it to mean strongly tells you or compels you to do something". Dr. Lamba stated that there is a distinction between such command hallucinations and a voice or voices that are encouraging. The latter situations he testified were not strictly speaking command hallucinations.

68 To further clarify, Dr. Lamba testified that a command hallucination is very specific in that it tells you to do something and there is some degree of compulsion or compelling quality which the person has to resist, or has to make an effort to resist. He testified that, in fact, many schizophrenic patients who experience command hallucinations do resist their command hallucinations. They do not act out in response to the command. He testified that the psychiatric literature referred to such a person as being more likely to respond to a command hallucination if it was a familiar voice.

69 According to Dr. Lamba, in the case of Mr. Khosa that familiar voice to Mr. Khosa would be Guru Nanak's voice. Dr. Lamba also testified that if the voice was harsh and commanding and compelling, the schizophrenic patient is more likely to comply with it. Dr. Lamba underscored that one of the most important issues respecting command hallucinations was whether or not the command heard related to delusional beliefs that were also present. He gave the example of an individual who believes that their child was the anti-Christ. If in addition to that delusional belief the person heard a command saying "kill it, it is the anti-Christ" such a command would be one that is related to the delusion. According to Dr. Lamba, such a person would be "more likely to not resist the command and to comply with the command". He noted that the command is not always drastic, such as a command to kill, or commit suicide, but rather can be as simple as a command to sweep the sidewalk. Dr. Lamba reiterated that from his review of the records, Mr. Khosa had no delusions respecting Amarjit Khosa.

70 Respecting the events leading up to the killing, Mr. Khosa had told Dr. Lamba that he had gone through a decision-making process in his mind considering alternatives of things he could possibly do to save his sister and resolve the situation so that the disruption to the family and family's honour could end.

71 Dr. Lamba stated that Mr. Khosa came to the conclusion that taking Amarjit Khosa to the hospital or calling the police were not going to be effective and would not be a permanent solution. Instead, Mr. Khosa told Dr. Lamba that to "finish her", in Mr. Khosa's words, so that she is "in a better place" was the decision that he came to.

72 In the course of his interview, Mr. Khosa indicated to Dr. Lamba that, following the decision to kill his sister, he had a twofold experience, one of a feeling as well as a voice. During that part of the interview, Dr. Lamba added, Mr. Khosa became quite animated and expressive as opposed to his usual flat affect. Mr. Khosa told Dr. Lamba that the voice also told him that, "It's okay what you are doing. It's okay what you are thinking of doing".

73 Dr. Lamba stated in evidence that Mr. Khosa also told him when he was in the act of killing his sister that he continued to hear the voice and that it said to do it with force; however, this evidence, I note, was not given in direct from Mr. Khosa or mentioned in the report of Dr. Kulwant Riar, who is the forensic psychiatrist called by the defence.

74 Dr. Lamba was asked by Crown counsel about Mr. Khosa's anxiety and Dr. Lamba noted that anxiety was part of Mr. Khosa's baseline. Crown counsel also reviewed with him the fact that some of Mr. Khosa's relatives indicated that Mr. Khosa was very quiet on July 21. Dr. Lamba indicated that being quiet and withdrawn was part of Mr. Khosa's baseline. Becoming even more quiet and withdrawn than normal may indicate that he was getting more ill, but just being quiet and withdrawn by itself was not sufficient to indicate that Mr. Khosa was in the acute stages of his paranoid schizophrenia. In order to find out whether he was going into the acute stage of his illness, Dr. Lamba stated that one would have to see a period of increased preoccupation with religious

themes leading up to that day: "an increase in his behaviours that are secondary to what he does when he gets these - when he becomes preoccupied with these religious themes. Those kinds of things. If one saw, then one could be more confident that he is starting or beginning this deterioration process".

75 Dr. Lamba was aware of the concerns Mr. Khosa had regarding his sister. He was also aware that Amarjit Khosa would on occasion assault their mother and accuse Mr. Khosa of being their mother's boyfriend or lover.

76 During his testimony, Dr. Lamba agreed with the statement that, even a "completely well-functioning human being without a mental illness can reach a point of frustration where they resort to killing another individual as a result of this type of frustration".

77 Dr. Lamba agreed with Dr. Riar that Mr. Khosa's concerns about his sister were grounded in reality. According to Dr. Lamba, the facts and record were inconsistent with Mr. Khosa's actions being the result of a psychotic break. In addition, the amount of time from Mr. Khosa's stable baseline behaviour to the supposed psychotic break and back to Mr. Khosa's return to his baseline state was, in his opinion, too short of a period of time. As well, the voices Mr. Khosa had heard and testified about in the past were for the most part harmless routine comments, not drastic commands.

78 Both doctors testified that, for the Court to find that Mr. Khosa had a psychotic break from reality, such that he felt compelled to do the killing, the Court would have to accept the evidence given by Mr. Khosa and further find that the voice was "strong". According to Dr. Lamba, it would have to have been a "strong" experience to result in a psychotic break stemming from Mr. Khosa's paranoid schizophrenia. In Dr. Lamba's opinion there was no real difference between a "permissive" or a "command hallucination". Rather it was the strength that was the key to the voice of the person hearing it that was important. In his report of September 1, 2013, he wrote:

If one accepts that this experience was strong, it would overwhelm his cognitive capacities even further beyond the level of stress he was experiencing. In that mental state, he could not be said to be capable of considering the moral rightfulness beyond that point or to applying any abstract knowledge of moral wrongfulness/ rightfulness in any meaningful way. Elements that would support one to accept the strong influence of this experience are- his reported emotional reaction, which is congruent to the stated content of the voice/ experience; an ongoing feeling of justification in his actions accompanied with a lack of regret and remorse in an individual who otherwise is not anti-social, criminal or violent; manifestations of illness, which although new and seemingly exculpatory and providing an excuse, are keeping with the type of manifestations he has experienced otherwise. On the other hand, a strong element that would lead to rejection of this experience as being a guiding one or a strong one or even present at the time just prior to and including the offence, is that Mr. Khosa appears to

have reported this experience for the first time, in his interview with Dr. K. Riar - or at least there is no indication in any materials that I have reviewed, that he reported such an experience prior to that interview. I do note that Mr. Khosa repeated the same experience in my interview with him as well. In his statement of March 9, 2011 taken at 21:26 hrs., he was specifically asked (lines 66- 75) about hallucinatory experiences, and he specifically denied these.

79 In summary, Dr. Lamba's evidence was that the onset of an acute stage of Mr. Khosa's paranoid schizophrenia, such that he is having a psychotic break and is divorced from reality, is precipitated by an increased focus on religious themes, a preoccupation with God, delusions of power, a manic state, elated mood, and an increase in depression. These symptoms were noted in the last acute phase in 2007. Thus, simply put, Mr. Khosa's illness has a progression prior to becoming acute and according to Dr. Lamba it was unlikely that Mr. Khosa would "go from his baseline to a psychotic state within hours". Since he did not believe that Mr. Khosa was in an acute state at the time of the offence, Dr. Lamba was of the opinion that Mr. Khosa was capable of knowing the nature and quality of his acts as well as that such acts were wrong.

(b) Dr. Kulwant Riar

80 Dr. Kulwant Riar was called by the defence as an expert witness in support of Mr. Khosa's assertion that he is not criminally responsible due to mental disorder.

81 Dr. Riar is the clinical director of Youth Forensic for the Province of British Columbia for juveniles from the ages of 12 to 18. He is additionally a professor with the Department of Psychiatry at the University of British Columbia. He was qualified in the trial as an expert in the area of forensic psychiatry.

82 Dr. Riar wrote in his report:

In my view, Mr. Khosa suffers from paranoid schizophrenia and has since the mid-1990s. He never achieved full remission from his sickness. His sickness is marred by negative symptoms as well as residual positive symptoms, that is, hallucinations and delusions. The positive symptoms fluctuated, becoming more pronounced or active either under stress or upon discontinuation of his medication.

In my view, Mr. Khosa has had a sense of responsibility for his family since the death of his father. To my understanding, he had a good relationship with his sister and until she herself became sick he has seen the evolution of her sickness and functioning. In his view, she was suffering and was vulnerable to exploitation by others. He has shown and expressed concerns about his sister to others. I believe that Mr. Khosa was feeling the stress of what was going on with

his sister and after receiving the call and dealing with his sister on the day of the incident, he became overwhelmed. This led him to becoming preoccupied with what to do to help his sister. In this stressed state of mind the thought of killing her to get rid of her misery became dominant in his mind. Once in this rigid frame of mind I believe that his thoughts of killing her were encouraged or validated by this belief and percept of God endorsing his ideas. I feel that in that frame of mind he was not able to appreciate that the killing of his sister was wrong. Even if he had some idea that killing was wrong legally he certainly felt morally justified to perform the act. I believe that his inability to recognize the wrongfulness of his actions was the product of the mental disorder he had suffered from for many year. I believe that after the fact he has certainly come to know that he has done something legally wrong and that he tried to hide it until becoming overwhelmed with grief and guilt when he disclosed his wrongdoing. Until today though he still believes that what he was done is the right thing on moral grounds. Although he feels distress over her death and takes responsibility, he still feels justified in doing so which I believe is the product of his disturbed mental state.

83 I must note that both Dr. Riar and Dr. Lamba are of one mind when it comes to describing an experience of Mr. Khosa that would indicate a psychotic break and that they were both of the opinion the experience has to be strong.

84 Dr. Riar gave evidence generally on schizophrenia and testified about the symptoms of schizophrenia. He testified about the treatment of schizophrenia by medication and that proper treatment makes fluctuations in the mental state of schizophrenics less frequent. If patients suffering paranoid schizophrenia stay on their medication they will often stay stable. He reports that about one-third of people with schizophrenia did well with medication, about one-third would still fluctuate, and about one-third, no matter what, would not do well; "the sickness always fluctuates".

85 According to Dr. Riar, the positive symptoms of schizophrenia are symptoms such as delusions, hallucinations, mood, aggressiveness and irritability. The negative symptoms of schizophrenia include a blunt facial expression, poverty of thought and thought blocking, which means thought processes stop suddenly mid-thought, and there is a general disorder of content of thought and a disorder of form of thought. By poverty of thought, Dr. Riar claimed he means the quality of the schizophrenic's thought is poor. They become very laconic and will "say a little bit but don't expand on it. So you have to kind of like - it is like pulling teeth, is when you get information from them..."

86 With respect to the likelihood of a rapid change in an individual's mental state who is suffering from paranoid schizophrenia, Dr. Riar stated that "If they are actively psychotic at this - the sickness is active there, then will be change from day to day basis. But if you are stable, then the symptoms will be stable for some time".

87 In Dr. Riar's report he wrote that the accused came home that day from picking up his mother and began to think about the situation with his sister. He was upset and felt helpless to resolve the situation. He worried about his mother and Amarjit Khosa's safety and then he told Dr. Riar, "I thought the only way to keep her safe is to kill her. I also got a voice from God that it was okay".

88 Dr. Riar was asked whether a person could give the appearance of being normal although having had a psychotic episode only hours earlier. His response was that it was difficult to assess unless one has had the opportunity to speak with him: "They could be like agitated, or they could be calm, but underneath they are psychotic. So until unless you do some examination of them, it is hard to determine".

89 While in re-examination, Dr. Riar stated that a person could fluctuate in and out of being psychotic within minutes; however, this would appear to be when the individual is already in a psychotic state, given his testimony.

90 Dr. Riar testified that he had met with Mr. Khosa twice at his clinic. He spoke with him in Punjabi and prepared a report following his consultation. He had reviewed Mr. Khosa's clinical records from Dr. Uppal and from the CRESST program. Dr. Riar explained that CRESST is a, "kind of mental health house where people who are chronically ill, so that they do not bring them to a hospital, sometimes they bring them to that facility when they are kind of relapsing or getting sick".

91 He first saw Mr. Khosa on May 9, 2012 and then again on November 14, 2012. He also saw Mr. Khosa's wife on two occasions.

92 Dr. Riar felt there would be more anxiety generated from speaking to the police than speaking to a psychiatrist. Dr. Riar described Mr. Khosa as presenting as being very blunt, and at the time of the incident Dr. Riar believes there was anxiety.

93 Dr. Riar was taken through some of the medical records by defence counsel including the records of Dr. Uppal. Dr. Riar had also been in the courtroom when Mr. Khosa testified and stated:

In the past, not around the time of the incident, there are indications that he had some command hallucinations. Command is that god is telling him what to do or what not to do. And those were the hallucinations which were prominently noted in the records and that's what he told me. At the time of my - when I asked him, he had auditory hallucinations, but they were more of from within his mind, within his head. They were not from outside. But in the past whether they were from outside, I have no idea. But around the time he said they were from within.

94 Dr. Riar was asked to distinguish between command and permissive hallucinations and he stated that a command hallucination is being told by the voice to do something. A permissive hallucination is a voice saying that a certain action is okay. He was asked by defence counsel, Mr. Mohan, in direct examination:

Q Whether it's a command hallucination or whether it's a permissive hallucination, my question to you is that a person who is suffering from paranoid schizophrenia will not be able to take an action without either of those.

A That's true, depending upon whether at the time they are in touch with the reality or not, that's the real crux there. People have command hallucinations all the time in schizophrenia, telling them go and kill yourself, go and kill yourself, but they don't act on it. They can - they can - there is some sense that they don't. There are also permissive - what you call permissive is their own thought, which they hear loud in their brain. So again, they can ignore that. But once they are so anxious because of that psychotic process, they cannot distinguish whether there is - it's a reality for them, or it's a fantasy for them. So that's the real issue here, if they lose the touch with the reality at the time, they will act on either of them.

95 It was Dr. Riar's opinion that Mr. Khosa was suffering from a permissive hallucination at the time of the offence. He was asked whether Mr. Khosa was suffering from delusions of persecution at the time of the incident and he indicated that he had not been told of any. However, he was aware of his anxiousness which was a positive symptom of schizophrenia.

96 Dr. Riar was asked about Mr. Khosa's treatment of Amarjit Khosa prior to the incident as well as Mr. Khosa's fears of her falling into the wrong hands and being used or suffering sexual assault. His response was that such worries in relation to someone like Amarjit Khosa would be common, even without suffering from paranoid schizophrenia. Dr. Riar testified that her situation was not a delusion; it was a reality and rational and that Mr. Khosa was worried about it.

97 Counsel for Mr. Khosa asked him:

Q Looking at the whole circumstances, would it be fair to say that concern of Mr. Khosa for his younger sister, caused the accused a lot of concern or stress?

A Yes. Yes.

98 Dr. Riar was asked about Mr. Khosa's mental state leading up to the offence and he noted that no one had been helping Mr. Khosa with the dispute with Amarjit Khosa and his mother. The responsibility all fell on Mr. Khosa and he became even more stressed, said Dr. Riar, and, "that's when the thought of helping her out by killing her entered his mind. And then it was kind of okayed by the God in his mind".

99 In direct examination, Dr. Riar stated that he did not think that Mr. Khosa knew that what he was doing was morally wrong at the time of the offence because in his opinion, Mr. Khosa was not

in touch with reality. In Mr. Khosa's mind, Dr. Riar claimed, he thought that what he was doing was for the betterment of the victim:

I think, as I said initially, that he got stressed, that he has to do - take care of the whole scenario, and his past experience where he tried to help her, it did not help her, so he was feeling more and more helpless. So here he felt totally helpless, that what else he can do to make the things better. So then the thought of killing her and putting an end to her misery come to his mind, so that's when it kind of snowballed into kind of having some kind of voice telling him it's okay to go and do it. So that's what he did.

100 In Dr. Riar's opinion, Mr. Khosa was suffering from a rigid state of mind and thought he had no other option but to kill his sister and his decision was endorsed by Guru Nanak Dev.

101 Dr. Riar testified that at the time of the killing, Mr. Khosa had the ability to recognize that it was legally wrong to do so; however, due to his mental disorder he was unable to recognize that killing was morally wrong. It was during Mr. Khosa's thought processes when he was considering the situation with his sister, in Dr. Riar's opinion, when Mr. Khosa lost touch with reality.

102 Dr. Riar was specifically asked whether the killing occurred as a consequence of anger and he advised he could not comment on that as he had no collateral information. He felt that as a consequence of the stress on Mr. Khosa due to his sister, combined with the strength of the God vision, Mr. Khosa lost touch with reality.

103 In cross-examination, Dr. Riar was asked about the statement to him by Mr. Khosa that he thought "the only way to keep Amarjit Khosa safe is to kill her" and the fact that Mr. Khosa then stated to Dr. Riar, "I also got a voice from God that it was okay". Dr. Riar clarified to the Court that Mr. Khosa told him that it was not a voice *per se*, but rather a feeling that God was okay with it.

104 In describing the killing, Mr. Khosa told Dr. Riar that he remembered saying to Amarjit Khosa that she had bothered them too much. Dr. Riar confirmed that this was a direct quote from Mr. Khosa. Mr. Khosa told Dr. Riar that he also remembered Amarjit Khosa asking him where their mother was. Mr. Khosa reported that he did not say anything but took out the knife. Mr. Khosa also told Dr. Riar that the day before Amarjit Khosa's murder he had never thought of hurting or killing her but he remembered praying to God for her death. He felt justified in his mind.

105 Dr. Riar testified:

Q ... So, as you said:

she was exploited by wrong people. She was suffering. She was causing insults to the family.

Those are his words?

A Yes.

Q He believes he did it for her to save her from predators and to avoid the shame to everybody.

A Yes.

106 Dr. Riar was questioned about the situation involving Amarjit Khosa and agreed it was a situation that would cause anyone frustration. It would be a normal phenomenon of a caring person but the key with respect to Mr. Khosa is whether it involved a psychotic break. Crown counsel cross-examined Dr. Riar:

Q Right. So he's quite capable of rationalizing all the effects her illness is having on the entire family?

A Oh, definitely, yes.

Q So really, it's not his decision to kill that's the key here. It's that he then becomes of the impression or precept that God is okay with it.

A That's right.

Q There are reasons behind the decision to kill.

A Oh, yeah, that - there is reasons behind it, yes.

Q So I mean, while we wouldn't approve it, but we could say there's rational thought that goes into his decision to have - to end her life, there's no way to make her better.

A That's right.

Q Right.

A That's right.

VII.

TESTIMONY OF THE ACCUSED

107 It is the Court's responsibility in respect of the evidence of Mr. Khosa that given that he has admitted certain facts respecting the killing, to consider whether, on a balance of probabilities, he has proven that he is not criminally responsible by reason of mental disorder. Together with more psychiatric evidence, it is for this Court to determine on the basis of his evidence and the collateral evidence that he was acting on the basis of a psychotic break. If he persuades the Court on the balance of probabilities, I am mindful that I must find him not criminally responsible by reason of mental disorder. If I do not believe his evidence, I cannot use that as part of any evidence to convict him. Instead, I would be finding the defence inapplicable and I must ask myself on the whole of the evidence tendered by the Crown and based on the evidence and admissions whether I am satisfied beyond a reasonable doubt that Mr. Khosa is guilty of second degree murder.

108 The accused testified through the assistance of a Punjabi interpreter.

109 Mr. Khosa is 43 years of age and is the eldest boy of four children. Mr. Khosa as has been noted is married and has two children of school age. He detailed to the Court his upbringing in India and his schooling which was at least the equivalent of high school education. Indeed, in India he had gone through three years of college.

110 Mr. Khosa, while not a witness to the events of his father's murder, had told the Court that, following the assassination of Prime Minister Gandhi, his father had been set on fire at the hands of a mob. That event marked the time when Mr. Khosa became responsible for his family.

111 He testified he came to Canada in 1989. In 1996 at the age of 26 he was first diagnosed with paranoid schizophrenia. At the time of the onset of his schizophrenia he was living in Abbotsford. He first became focussed on his religion at that time. He felt he had a special gift and that Guru Nanak was communicating with him. He also heard the voice of Lord Krishna. This was the first time that he suffered auditory hallucinations. He also believed he saw and may have felt snakes on

his legs. He was prescribed antipsychotic medications in addition to anti-anxiety medication. He was hospitalized at that time.

112 It is of note that Mr. Khosa has not been hospitalized since that time nor certified under the *Mental Health Act*. He has been admitted to CRESST; this is the mental health facility, which was described by the psychiatrists in these proceedings as both respite care and a place where clients can go to ensure they are on track with their medications, or if they are feeling they are becoming acutely mentally ill or anxious. A physician's referral is required.

113 Mr. Khosa works part-time, two hours at a time, egg picking. He relies on his disability pension to help support his family and to pay his mortgage. His wife works.

114 Mr. Khosa told the Court he quit his job because of hearing the voice of Guru Nanak Dev telling him that he would get lots of money so he would not have to work.

115 Mr. Khosa testified in his direct evidence that the killing of Amarjit Khosa occurred after he picked up his mother from the victim's residence to take his mother back to his home. He testified it was getting to be night time and he felt concern that Amarjit Khosa, the victim, might go outside. He became nervous and was unable to figure out what to do. He then testified:

That day there was a telephone call from Jagroop that Amarjit is constantly having a fight with Mom, and that take Mom from here to your home. And then I went to get her. And then she said that "Here, here comes your lover to take you." And then I got her and took her home. And then she started making phone calls at home. And then I started thinking what can - what am I going to do. And it was getting night time. I felt concerned that she may go outside. And then I started getting nervous and I was not able to figure out what to do. And then all of a sudden I heard the voice in my head, that if you want to save her, then you kill her. And then I went with a knife. And then I went to the house and she was standing there in the house. And then there was a scuffle. And then the knife got jabbed and she died. And then I came back home.

116 Mr. Khosa testified that he took the knife home. He realized that there had been blood splashed on his clothes so he put them in the laundry. He hid the knife. He did not explain why; he just said that he hid it.

117 Mr. Khosa explained that in the first interview with police he did not admit to the killing. In regard to the second statement to the police which was warned, he did admit to the killing. Mr. Khosa stated "There was burden on my soul that I have lied to police and I went to tell the truth". He agreed that he never told the police in any of his statements about the voice that encouraged him to kill his sister. Mr. Khosa stated that his concern may have been, were he to have told the police about the voices, it might leak out to the media. People would be angry at him for saying that Guru Nanak was talking to him.

118 Mr. Khosa also admitted to the killing in his testimony and explained to the Court that he had never had any altercations or incidents with the victim before the offence.

119 In cross-examination, Mr. Khosa was asked about his conversations with Dr. Riar and Dr. Lamba. He indicated that he would not have lied to Dr. Riar about whether he had heard voices on the day of the event as he knew the importance of telling the truth. He was questioned by Crown counsel on this point:

Q Well, if I tell you that you said to Dr. Riar that it was not a voice in the third person, but it was a kind of a feeling that God was okay with it, how would you respond?

A Maybe that I forgot to mention it.

Q Okay. So you're telling us you didn't tell Dr. Riar everything that happened?

A Whatever came to my mind, I kept on telling that.

120 Mr. Khosa referred to taking Risperdal, olanzapine and clonazepam. He was also asked in direct examination whether he was praying to God for his sister Amarjit Khosa's death and his reply was that he could not remember although he again indicated he knew it was important to tell the truth to Dr. Riar.

121 Mr. Khosa also testified about his discussion with Dr. Riar regarding the fact that he had thought about how to resolve the situation with the victim and that he had come to the conclusion that the only way to keep her safe was to kill her.

122 When Mr. Khosa was cross-examined on his evidence given in direct, he conceded that by the tenets of Sikhism it was wrong to kill his sister but he felt in the circumstances he was "okay".

123 He was also asked about the trips he took to India in an effort to be cured. The voice that he heard on that occasion was his uncle, who was indicating there was a holy man that might help him.

124 During cross-examination by Crown counsel, Mr. Khosa agreed that he prayed to Guru Nanak to cure his sister. He stated that he would on occasion get angry at Guru Nanak however and spat on his picture on one occasion. He denied ever praying to God for his sister's death although he had told Dr. Riar, according to Dr. Riar's report, that he had prayed for that.

125 Mr. Khosa was cross-examined on his visit to Dr. Riar and he agreed that he told Dr. Riar that his sister would get quite aggressive, and would argue and fight with the family. She would get particularly upset if anyone tried to give her advice. On occasion Mr. Khosa would try to give her advice which he agreed was part of his responsibility as a big brother.

126 Mr. Khosa further testified that he was concerned that people would take advantage of his little sister and that he was worried that they would rape her or use her. He agreed on cross-examination that he was concerned about the family's reputation and honour. He testified that she was divorced and that was not an honourable thing. Similarly, if she had been raped and it had been videotaped and put on the internet and everyone knew about it, that too would bring dishonour to the family. Mr. Khosa agreed that he told Dr. Riar that he killed his sister to save her from predators to avoid shame and to save the family honour.

127 When questioned about what he told Dr. Riar with regard to his thoughts about killing his sister on the day of the offence, he stated:

Q You also told him the voice did not tell you to kill her, but just agreed with you.

A Yes.

Q But that's not what you told us here in court, sir. Let's just go back to what you said in court. You told us this morning you heard a voice in your head, saying that if you want to save her, then you kill her.

A Yes.

Q So you told us this morning the voice told you to kill.

A Yes.

128 When Crown counsel asked Mr. Khosa whether what he had said to Dr. Lamba was true, he said

A The truth is that I heard the voice. The voice came that if you want to save her, if you want to protect her, kill her.

Q So what you told Dr. Riar was not the truth, then.

A I don't remember anything.

129 Mr. Khosa agreed that when he brought his mother home that day and that he was frustrated.

130 In the course of cross-examination he endeavoured to say the reason that he returned to the police station to confess to killing his sister was that he was sorry he had lied, not because he felt remorse over having killed his sister.

131 During cross-examination, Crown counsel put the following passages from his statement to Corporal Dhaliwal to Mr. Khosa:

Q All right:

Okay.

Says Bho Dhaliwal. You say:

She swore a lot.

Bho Dhaliwal says:

Mm-hmm.

You say:

If my mother was sitting outside, sitting outside on a hot day.

Yes.

Says Bho Dhaliwal. And you say:

She used to say to her that you're sitting outside for men.

A She's looking at them.

Q Right. And you again were talking about what your sister would say to your mother.

A Yes.

Q And you took this as an insult to your mother.

A Yes.

Q Bho Dhaliwal then says:

Okay.

And you say:

I couldn't handle these types of things.

A But I was never angry at Amarjit.

Q I am suggesting to you that you were asked these questions and gave these answers to Detective Bho Dhaliwal.

A Correct.

Q And I am suggesting that this treatment of your mother was unacceptable to you.

A Yes.

Q This was offensive to her reputation and the family's reputation.

A Yes.

Q This made you very frustrated.

A I used to get anxiety - anxiety because of this.

Q You didn't want her to do this - to treat your mother this way.

A Yes.

Q Okay. I'm going to suggest it upset you.

A Yes.

Q Okay. And she'd been doing this for a long time.

A Yes.

132 Mr. Khosa agreed he had said that. He further stated that he was not lying to Corporal Dhaliwal, but testified that he had no memory of it.

133 Crown counsel suggested to him that his sister repeatedly called the house the afternoon of the offence and that such calls were upsetting him:

Q And you decided that if she calls again, I'm going to kill her.

A Yes.

Q And she did call again.

A Yes.

134 Mr. Khosa also admitted that he said he regretted killing his sister in the course of his interview with Corporal Dhaliwal.

135 Mr. Khosa was cross-examined on the portion of his statement to Corporal Brach following his address. Corporal Brach stated to Mr. Khosa:

Q ... Baljinder Brach says:

This situation must have occurred because of anger.

Your answer:

Yes, it occurred in anger.

His question:

This, like you're saying it occurred in anger?

Your answer:

Yes.

His question:

Is it not this, that four to five months earlier you thought I'm going to do this?

Your answer:

No, I did not think about it.

Q It was just because you got angry all of a sudden?

And the answer:

I got angry all of a sudden.

136 Crown counsel then asked:

Q You remember being asked those questions and giving those answers, sir?

A I don't remember that.

137 Thus, when Mr. Khosa was confronted with answers that he had committed this killing as a consequence of frustration and anger, he stated that he did not remember.

138 The cross-examination by Crown counsel continued:

Q ... Well, again, your counsel have admitted that you made these statements and they were voluntary. I'm going to suggest you told this police officer that you killed your sister because you suddenly got angry.

A I heard the voice, also.

139 Mr. Khosa was further asked about his statement given in direct examination, that there was a scuffle, that the knife got jabbed and his sister died. Crown counsel asked, "That's not true, is it, sir?" and Mr. Khosa answered, "No, I wanted to kill her":

Q I'm going to suggest, sir, that you went over there, you confronted her.

A Yes.

Q You told her "You have bothered us enough".

A Yes.

Q And then you repeatedly stabbed her about the throat.

A Yes.

Q This was not an accident. This was you deliberately trying to kill her with a steak knife.

A Yes.

Q To protect your family from dishonour?

A Yes.

140 Mr. Khosa told the Court that he went through the decision-making process on the day of the offence after receiving repeated telephone calls from his sister and spoke of the honour of his family being in jeopardy from his sister's actions and her potential actions. He was anxious about his sister, he testified, especially when she was missing.

141 When interviewed by Dr. Riar, Mr. Khosa had testified about his thoughts before killing Amarjit Khosa. He saw it as his only option.

142 Crown counsel asked whether he had made his decision and then heard the voice. Mr. Khosa

agreed. Mr. Khosa also agreed that his memory of the offence was better in his interview with Dr. Riar than it was at trial.

143 Mr. Khosa had stated to Dr. Lamba that he considered whether to call the police but then he rejected this as a temporary solution to a problem which was more permanent. He told Dr. Lamba that he also considered having her hospitalized. Again, this decision was rejected as a temporary solution. He told the Court that he settled on killing his sister after thinking about the problem. Mr. Khosa stated that his reasons included that his sister would be in a better place and there would be no more problems for the family arising from her behaviour.

144 Mr. Khosa was cross-examined on whether he thought his actions in killing his sister were wrong and whether other members of the Sikh community would see the killing as wrong and he stated yes, other people in the community would see the act as wrong but that for him it was okay, based on what he had heard from Guru Nanak Dev.

145 Crown counsel asked:

Q Did you think other family members were hearing Guru Nanak in their head?

A No.

Q Okay, it was just you that was hearing Guru Nanak?

A Yes.

Q So you understood that only you were getting the message that this was the right thing to do.

A Yes.

Q All right. And without that message from God, you understood this was the wrong thing to do.

A No, I did not think of anything else.

Q Okay, but surely you knew that killing was wrong.

A Yeah, but it was - it was a must for her.

Q Right. But - but generally you understood that killing was wrong.

A Yes.

Q It's something that Sikh teachings would not approve of.

A Yes.

Q Okay. And other Sikhs would see it as a wrongful act?

A It may have been their idea, but for me that was - it was an okay thing.

Q Okay, that's fine. But so for you it was an okay thing, but you understood that others might see it as wrong.

A Yes.

VIII.

LEGAL ANALYSIS

(a) Post-Event Conduct

146 The Crown submits that the actions of Mr. Khosa following the killing of his sister may be taken into account. On this point, the Ontario Court of Appeal has held that the Crown may rely on evidence in certain circumstances of what the accused did or said after an offence has been

committed as circumstantial evidence supportive of guilt: see, for example, discussion at paras. 283-285 of *R. v. Yumnu* (2010), 260 C.C.C. (3d) 421 (O.N.C.A.), affirmed without reference to post-offence conduct (2012), 290 C.C.C. (3d) 323 (S.C.C.).

147 In the decision of *R. v. Jaw*, 2009 SCC 42, 247 C.C.C. (3d) 227, however, post-offence conduct cannot on its own result in an inference of a degree of culpability. Post-offence conduct can only be used to impugn credibility and not to infer intent. The post-offence conduct can be used to impugn an accused person's credibility or to destroy the defence that relates to a person's state of mind at the time of the offence or that relates to such a defence of not being criminally responsible under s. 16 of the *Criminal Code*: see *Jaw*, at para. 40.

148 A false statement to the police cannot be used to assess the veracity of a later statement and has no probative value on the question of intent to commit murder: see also *R. v. Burner*, 2012 BCCA 173. Accordingly, I have not considered the fact that Mr. Khosa did not indicate to the police that he heard voices at the time of the offence in assessing his intent in this matter. However, I will consider the statements along with the entirety of the evidence before me in assessing Mr. Khosa's credibility.

(b) Accused's Statements to Psychiatrists

149 Defence counsel submitted that only limited use could be made of the statements by the accused to the psychiatrists. This is not the same issue as how the Court is to weigh the opinion of the expert. Rather, the issue here is the admission of prior inconsistent statements made by the accused himself to another witness.

150 In *R. v. Groves*, 2013 BCCA 446, Mr. Justice Frankel writing for the Court of Appeal discussed the admission of prior inconsistent statements of an accused. The appellant in *Groves* argued that the trial judge had erred in not instructing the jury that his prior statements could only be used for the limited purpose of assessing credibility. Mr. Justice Frankel disagreed with this argument, stating at para. 43:

[43] Both the 1999 and 2009 editions of *The Law of Evidence in Canada* refer to *R. v. Mannion*, [1986] 2 S.C.R. 272, as authority for the proposition that a statement by an accused used for the first time in cross-examination is admissible for its truth. In that case, Mr. Justice McIntyre stated (at 278):

The respondent, who was also shown to have made inconsistent statements, was of course in a different position. Being an accused, that is, a party litigant, his prior inconsistent statements could be received and used by the jury as evidence concerning the issue of guilt or innocence. The prior statements could be admissible against an accused as past admissions or declarations: ...

[44] In light of *Mannion*, the law in this jurisdiction is reflected in the following statement by Mr. Justice Finch (as he then was) in *R. v. Tran*, 1999 BCCA 535 at para. 24, 129 B.C.A.C. 277:

[24] Prior inconsistent statements of an accused are treated differently from those of other witnesses. Such a statement by an accused may be used by the jury as evidence going to the substantive issue of guilt, and not just credibility: see *R. v. Mannion*, [1986] 2 S.C.R. 272, 28 C.C.C. (3d) 544 at 549-550 and *R. v. Richards* (1997), 87 B.C.A.C. 21 at pp. 36-37. There was no need for instructions to the jury limiting the use they could make of the appellant's prior inconsistent statements, nor was there a requirement that the accused adopt a statement before it could be considered as evidence against him. There was no error by the judge in her instructions on this issue.

151 Based on the above analysis in *Groves*, I am entitled to use Mr. Khosa's previous statements in order to determine both the substantive issue of whether the accused has established the defence of not criminally responsible by reason of mental disorder and in order to assist in making a finding of credibility. However, in this case as Mr. Khosa was cross-examined with regard to his prior inconsistent statements, I am relying primarily on his in-court testimony in my findings of credibility and the subsequent findings with regard to the defence of not criminally responsible by reason of mental disorder.

(c) Offence of Murder

152 Mr. Khosa is accused of intentionally killing his sister and the Crown here has charged second degree murder. Section 229 of the *Criminal Code* states:

229. Culpable homicide is murder

- (a) where the person who causes the death of a human being
 - (i) means to cause his death, or
 - (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
- (b) where a person, meaning to cause death to a human being or meaning to cause

him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

- (c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

231.(1) Murder is first degree murder or second degree murder.

- (2) Murder is first degree murder when it is planned and deliberate.

...

- (7) All murder that is not first degree murder is second degree murder.

153 In order to convict an accused of second degree murder the Crown must demonstrate the following elements beyond a reasonable doubt:

1. The individual intended to cause the death. Here, that Mr. Khosa intended to cause the death of Amarjit Khosa.
2. That the person caused the death unlawfully. Here, that Mr. Khosa caused his sister's death unlawfully.
3. That the person had a state of mind required for murder, meaning that, in this case, Mr. Khosa meant to cause the death of Amarjit Khosa.

154 The defence agrees that the *actus reus* of the offence has been proven as set out in the Agreed Statement of Facts, which were submitted pursuant to s. 655 of the *Criminal Code*.

155 The burden to prove the offence of second degree murder rests with the Crown and the accused is to be assumed to be innocent until proven guilty. The burden of proof for the offence remains with the Crown beyond a reasonable doubt throughout the trial. In particular, the burden never shifts from the Crown to prove every element of the offence beyond a reasonable doubt: see *R. v. W. (D.)*, [1991] 1 S.C.R. 742.

156 As noted throughout the admissions and through the Agreed Statement of Facts the evidence here leads to the inevitable conclusion that Harmohinder Khosa intended to cause the death of his sister, Amarjit Khosa, and that he understood what he was doing.

157 I find that the Crown has proven beyond a reasonable doubt that Mr. Khosa did intend to cause the death of his sister, Amarjit Khosa. As noted at the outset, the sole question then is whether the defence of not criminally responsible by reason of mental disorder applies in this case.

(d) Law Relating to Knowing One's Acts are Wrong

158 In this case, Mr. Khosa is alleging through his counsel that he is not guilty by reason of mental disorder pursuant to the provisions of s. 16 of the *Criminal Code*. The issue arising in this case, given that the accused suffers paranoid schizophrenia, is whether he was suffering a psychotic break from reality such that he did not know his acts were wrong.

159 Section 16 of the *Criminal Code of Canada* provides as follows:

16.(1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

- (2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.
- (3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

160 As noted by Mr. Justice Powers in *R. v. Schoenborn*, 2010 BCSC 220 at para. 11, the burden is upon the accused to "... prove the defence on the balance of probabilities. The balance of probabilities is a different standard than proof beyond a reasonable doubt which applies to the Crown in proving the offence." Mr. Justice Powers states:

[12] A party who has the burden of proof on an issue, on the balance of probabilities, must convince the court that what they assert is more probable than not, and that the balance is tipped in his or her favour. The evidence must be more convincing than the evidence on the other side. The person with the burden must show that what they assert is more probable than not (*F.H. v. McDougall*, 2008 SCC 53). If the evidence on an issue was evenly balanced so that the court is unable to say where the balance of probabilities lies, then the person who has the burden of proving it would have failed to do so. All of the evidence produced on that issue must be considered, no matter who has produced that evidence. In order to find that something has been proven on the balance of probabilities, it is not necessary for the jury or the trier of fact to be sure, but simply to find that the event to be proven is more probable than not or more likely than not.

161 In the recent Supreme Court of Canada decision of *R. v. Bouchard-Lebrun*, 2011 SCC 58, Mr. Justice LeBel, writing for the Court, said:

[56] An accused who wishes to successfully raise the defence of mental disorder must therefore meet the requirements of a two-stage statutory test. The first stage involves characterizing the mental state of the accused. The key issue to be decided at trial at this stage is whether the accused was suffering from a mental disorder in the legal sense at the time of the alleged events. The second stage of the defence provided for in s. 16 *Cr. C.* concerns the effects of the mental disorder. At this stage, it must be determined whether, owing to his or her mental condition, the accused was incapable of "knowing that [the act or omission] was wrong" (s. 16(1) *Cr. C.*).

[Emphasis in original]

162 Section 16 of the *Criminal Code*, in brief, requires proof on a balance of probabilities of, (1) a mental disorder that (2) rendered the accused incapable of either: (i) appreciating the nature and quality or omission; or (ii) knowing that it was wrong.

163 There is no issue in the case at bar of whether Mr. Khosa suffers from the mental disorder of paranoid schizophrenia. As well, defence counsel submitted in closing argument that: "It appears that from Mr. Khosa's testimony and from the testimony of both Crown and defence experts that Mr. Khosa appreciated the nature and quality of his actions when he committed the act in question." There is thus no claim that Mr. Khosa was incapable of appreciating the nature and quality of the act he committed. The sole issue is the second branch of the second stage of s. 16(1) test, i.e. whether Mr. Khosa was capable of knowing his acts were morally wrong.

164 Chief Justice Lamer in *R. v. Chaulk*, [1990] 3 S.C.R. 1303:

[97] ... it is plain to me that the term "wrong" as used in s. 16(2) must mean more than simply "legally wrong". In considering the capacity of a person to know whether an act is one that he ought or ought not to do, the inquiry cannot terminate with the discovery that the accused knew that the act was contrary to the formal law. A person may well be aware that an act is contrary to law but, by reason of "natural imbecility" or disease of the mind, is at the same time incapable of knowing that the act is morally wrong in the circumstances according to the moral standards of society. This would be the case, for example, if the person suffered from a disease of the mind to such a degree as to know that it is legally wrong to kill but, as described by Dickson J. in *Schwartz v. The Queen*, [1977] 1 S.C.R. 673] kills "in the belief that it is in response to a divine order and therefore not morally wrong" (p. 678).

165 Chief Justice Lamer further stated it is possible that a person may be aware that it is ordinarily wrong to commit crime, but by reason of a disease of the mind believes that it would be "right" according to the ordinary morals of society to commit the crime in a particular context. In this situation the accused would be entitled to be acquitted by reason of insanity.

166 In *R. v. Ratti*, [1991] 1 S.C.R. 68, Chief Justice Lamer stated:

[20] ... In accordance with our decision in *Chaulk*, the trier of fact must be directed to consider whether the appellant was rendered incapable, by reason of disease of the mind or "natural imbecility", to know that his act was morally wrong in the circumstances. It is not sufficient to decide that the appellant's act was a result of his delusion. Even if the act was motivated by the delusion, the appellant will be convicted if he was capable of knowing, in spite of such delusion, that the act in the particular circumstances would have been morally condemned by reasonable members of society.

167 The Supreme Court of Canada revisited the nature of the inquiry into not guilty by reason of mental disorder in the branch of wrongfulness in s. 16(1) in *R. v. Oommen*, [1994] 2 S.C.R. 507, where Madam Justice McLachlin (as she then was) stated at para. 21:

[21] A review of the history of our insanity provision and the cases indicates that the inquiry focuses not on general capacity to know right from wrong, but rather on the ability to know that a particular act was wrong in the circumstances. The accused must possess the intellectual ability to know right from wrong in an abstract sense. But he or she must also possess the ability to apply that knowledge in a rational way to the alleged criminal act.

168 Madam Justice McLachlin went on to say that the crux of the inquiry is to decide whether the accused lacks the capacity to decide rationally whether the act is right or wrong. At para. 26 she stated:

[26] The crux of the inquiry is whether the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make a rational choice about whether to do it or not. The inability to make a rational choice may result from a variety of mental disfunctions; as the following passages indicate these include at a minimum the states to which the psychiatrists testified in this case - delusions which make the accused perceive an act which is wrong as right or justifiable, and a disordered condition of the mind which deprives the accused of the ability to rationally evaluate what he is doing.

169 Finally, at para. 30, McLachlin J. explained that the standard, as held in *Ratti*, *supra*, is an objective one. The issue is whether the accused possessed the capacity, present in the ordinary person, to know that the act in question was wrong having regard to the everyday standards of the

ordinary person.

170 In *R. v. J.M.W.* (1998), 123 C.C.C. (3d) 245 (B.C.C.A.), a decision of our Court of Appeal, the Court dealt with an appeal from the conviction of two young offenders for a number of charges. The question on appeal was whether the accused should have been found not criminally responsible due to mental disorder. As in this case, both counsel were agreed that the two accused suffered from a mental disorder. The question was whether, due to their delusions, did the fact they believed that what they were doing was both right and necessary satisfy the test in *Oommen*. At trial, the accused satisfied the first branch of the test, that they were incapable of knowing their actions were wrong.

171 Defence counsel in *J.M.W.* argued that the test as stated in *Oommen* superseded the judgments in *Chaulk* and *Ratti*, and departed from them. It was argued, even though the accused knew that society would condemn their actions their delusions made them believe that departing from the norms of society was justified. They were thus unable to make a rational choice about the rightness or wrongness of their actions. Chief Justice McEachern, writing for the majority of the Court, disagreed with this interpretation of *Oommen*, stating:

[30] ... If this is correct, one who is subject to a delusion, or even a "fantasy" about the world around him and chooses as a result to set himself above or apart from the moral code of society, may escape criminal responsibility.

[31] I do not understand *Oommen* to go this far, however. For one thing, the Court nowhere suggested it was overruling or departing from *Ratti*, *Chaulk* or other authorities. Further, immediately following the passage quoted at paragraph 29 above, McLachlin J. in *Oommen* went on at 521 to say this:

Finally, it should be noted that we are not here concerned with the psychopath or the person who follows a personal and deviant code of right and wrong. The accused in the case at bar accepted society's views on right and wrong. The suggestion is that accepting those views, he was unable because of his delusion to perceive that his act of killing was wrong in the particular circumstances of the case. On the contrary, as the psychiatrists testified, he viewed it as right. This is different from the psychopath or person following a deviant moral code. Such a person is capable of knowing that his or her acts are wrong in the eyes of society, and despite such knowledge, chooses to commit them.

[32] In my opinion, this passage qualifies the wider statement preceding it, and clarifies that a person who understands society's views as to what is right and wrong in particular circumstances but either does not care or because of a

delusion chooses to act nevertheless in contravention of society's view, is not to be excused from criminal responsibility. This view is consistent with *Ratti* and other authorities cited to us and is supported by two passages in Herbert Fingarette, in *The Meaning of Criminal Insanity* (1972), quoted with apparent approval in *Oommen*. That learned author states that a person who is aware of society's values and has a capacity to make a rational choice between right and wrong, but judges society's values to be wrong, or inapplicable to himself, cannot escape responsibility. He adds:

What we are saying here is that "knowing the nature and quality of the act or that it is wrong" in the context of insanity (and thus, rationality) means "having the capacity to rationally assess - define and evaluate - his own particular act in the light of the relevant public standards of wrong"...

The proceeding comments should not be taken to mean that a person is not responsible if he holds irrational beliefs, for that is not the case.... The point is that if the person has a mental makeup which is such that he lacks even the capacity for rationality, then responsibility is vitiated. If he has the capacity but simply fails to use it, responsibility is not precluded.

172 The Chief Justice continued:

[33] With respect, I think that is what happened here. The accused had the capacity to understand society's values but nevertheless decided that they would carry out their own plan, or their amended plan, both of which involved hijacking a school bus, which they knew was offensive to society's values. The narrow question is whether they had the capacity, in spite of their delusions, rationally to decide which course to follow in the same way a normal person would.

173 This understanding of the test for s. 16 was recently confirmed by the Ontario Court of Appeal in *R. v. Guidolin*, 2011 ONCA 264. In that case the Court of Appeal overturned a finding of not criminally responsible for mental disorder. After quoting the law the Court dealt with the opinion of the psychiatric expert at para. 21:

[21] In my view, nothing in the report provides a reasonable basis upon which an NCRMD [not criminally responsible by reason of mental disorder] verdict could be returned. The first passage contraindicates an NCRMD verdict. Dr. MacDonald appears to accept the appellant has the capacity to recognize the wrongfulness of his act but simply does not care. That state of mind does not constitute a defence under s. 16: *Oommen* at p. 521; *R. v. J.M.W.* (1998), 123 C.C.C. (3d) 245 at para. 32 (B.C.C.A.).

[22] In the first passage quoted above, Dr. MacDonald opines that the appellant is "unable to exercise the judgment of a normal person (*Oommen*)". If this is intended as a description of the meaning of the word "wrong" from *Oommen*, the doctor has misunderstood that case. The inability to exercise the judgment "of a normal person" is a long way removed from the incapacity to know that one's actions are wrong according to the normal standards applicable in the community.

IX.

CREDIBILITY

174 As noted earlier in these reasons, I am mindful of Mr. Khosa's condition in making an assessment on credibility, including the effect of the illness on his presentation. I am mindful of the effects of the medication he testified he was taking at the time of the killing and continues to take, Risperdal, clonazepam and olanzapine. I am consequently assessing his credibility on his testimony, its consistency, both internally and in relation to other evidence, and how his testimony interacts with other evidence: see additionally on this point *R. v. Sun*, 2005 BCPC 38.

175 Generally the ultimate conclusion on credibility is for the trier of fact and for that I quote *R. v. Marquard*, [1993] 4 S.C.R. 223. However, in circumstances where a witness suffers disability that may affect their ability to testify, evidence respecting their ability to testify is admissible evidence if the disability is one not readily apparent: see for example *R. v. Julien* (1980), 57 C.C.C. (2d) 462 (Q.C.A.).

176 In the case at bar it was suggested by Dr. Riar that the accused, as a consequence of his illness, could be more suggestible and could, depending on the circumstances, answer differently in different environments. However, I find the accused was able to deny matters and provide responsive answers to the questions that were posed to him in both direct and cross-examination.

177 I find the expert evidence on the manner of Mr. Khosa testifying only helpful insofar as it explains his demeanour. That is, I accept it only insofar as it explains his flat or blunt affect. There was, in any event, no evidence that his medication would impact on his ability to tell the truth. In fact, Dr. Riar testified to that effect, stating that Mr. Khosa's medication would not impact on his ability to tell the truth.

178 In *R. v. Borsch*, 2007 MBCA 111, leave to appeal refused, [2007] S.C.C.A. No. 580, the Court was considering the trial judge's assessment of credibility in a case in which the accused raised a defence pursuant to s. 16 of the *Code*. The accused claimed to be suffering from Post-Traumatic Stress Disorder and that he had committed the offence of unlawful break and entry and sexual assault of a young girl while in a dissociative state brought on by his mental disorder.

179 The Crown successfully appealed from the trial court's finding that the defence of not criminally responsible by reason of mental disorder applied. One of the grounds of appeal was that there was a failure by the judge to make the necessary findings of fact to serve as a basis for the accused's psychiatric expert opinion evidence. In the decision, Mr. Justice Freedman, writing for the Court, held on that ground of appeal:

[77] It will be helpful to establish the applicable legal framework. In *R. v. Lavallee*, [1990] 1 S.C.R. 852, Wilson J. summarized the propositions which originated in the seminal decision of the Supreme Court in *R. v. Abbey*, [1982] 2 S.C.R. 24, in the following terms (at p. 893):

1. An expert opinion is admissible if relevant, even if it is based on second-hand evidence.
2. This second-hand evidence (hearsay) is admissible to show the information on which the expert opinion is based, not as evidence going to the existence of the facts on which the opinion is based.
3. Where the psychiatric evidence is comprised of hearsay evidence, the problem is the weight to be attributed to the opinion.
4. Before any weight can be attributed to an expert's opinion, the facts upon which the opinion is based must be found to exist.

180 His Lordship also referred to *R. v. Giesbrecht* (1993), 85 Man. R. (2d) 69 (C.A.), aff'd [1994] 2 S.C.R. 482, where the Manitoba Court of Appeal followed *Lavallee* in finding that an expert's opinion cannot usurp the function of the finder of fact. Mr. Justice Freedman stated:

[80] In summary, these dicta show clearly that it is for the trier of fact to decide, based on admissible evidence, whether the accused did suffer from a mental disorder that rendered him incapable of appreciating the nature and quality of the act or of knowing that it was wrong.

181 Defence counsel for Mr. Khosa also submitted a number of other cases were applicable, some of which I will now go through.

182 In *R. v. Singh*, 2011 ABQB 323, the accused had killed his father by hitting him on the head with a blunt instrument. The accused suffered from a severe and psychotic form of schizophrenia, however there was no dispute in *Singh* regarding the defence of not criminally responsible by reason of mental disorder. Both experts and counsel agreed that was the case and in the circumstances it is distinguishable from the case at bar.

183 In *R. v. J.R.V.*, 2011 BCSC 176, the accused was found not criminally responsible after it was found that he suffered from a serious disorder and was incapable of knowing that what he was doing was wrong when he killed his wife. Again, in that decision there was a joint submission on

the issue of not criminally responsible by reason of mental disorder and uncontradicted expert evidence indicating that there was a basis for that defence which was accepted by the trial judge. The Court found that there was no other motive and the accused thought his wife was possessed by the devil or anti-Christ before he killed her.

184 In *R. v. Molodowic*, 2000 SCC 16, the Supreme Court of Canada overturned a conviction because it was not reasonable for the jury to not enter the verdict of not criminally responsible by reason of mental disorder given the evidence before the Court. In the original trial court, the defence had proven, according to the Supreme Court of Canada, that even though the accused knew what he was doing and knew the nature of the quality of his act and that it was illegal, that he did not think he would be condemned by a reasonable member of society. This case also involved uncontradicted expert evidence.

185 I am mindful, accordingly, that I must find, on admissible evidence, the factual basis upon which the expert opinion is founded if I am to accept that opinion.

186 Again, in *Borsch* the Manitoba Court of Appeal held:

[92] In my respectful opinion, in this case it was incumbent for the judge to make clear, and not leave for inference, the following:

1. That he decided, and why he decided, that the accused suffered from PTSD at the time of the offences, and why the evidence for the accused persuaded him, as it must have, that he was not malingering or fabricating;
2. that he decided, and why he decided, that the PTSD induced a dissociative state in the accused at the time of the offences; and
3. that he decided, and why he decided, that the PTSD-induced dissociative state constituted a mental disorder that prevented the accused from appreciating the nature and quality of the acts he was committing, or of knowing that they were wrong.

187 In assessing witness' evidence, the Court must make certain findings of fact in connection with their credibility. Those factors to be taken into account were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, where it was stated:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with

independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). [As noted, I am not bearing much weight on that due to the circumstances I have outlined above]. Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

188 In *R. v. Kandola*, 2012 BCSC 968, Mr. Justice Romilly outlined the general legal principles to take into account in the assessment of credibility. He noted that just because the accused has an interest in the outcome of the case does not mean his testimony should be rejected and he cites *R. v. B.(L.)* (1993), 82 C.C.C. (3d) 189, and *R. v. P.(G.F.)* (1994), 89 C.C.C. (3d) 176.

189 In *Kandola* Mr. Justice Romilly also stated:

[10] Accordingly, a trier of fact is entitled to accept parts of a witness's evidence and reject other parts, and similarly, the trier can accord different weight to different parts of the evidence that the trier of fact has accepted: *R. v. Howe* (2004), 192 C.C.C. (3d) 480 (Ont. C.A.) at para. 44.

190 Additionally, mere disbelief of the accused's evidence does not satisfy the burden of persuasion on the Crown: see *R. v. W.(D.)*. It is an error to infer guilt merely from disbelieving the accused.

191 Mr. Justice Romilly also noted the caution that should be afforded to assessing demeanour of a witness and stated, at para. 15: "It is not the sincerity of the witness, but the reliability of the witness that is important on the issue of credibility."

192 Finally, Justice Romilly quoted from the New Brunswick case of *R. v. Lawrence*, 2010 NBQB 135, a decision on how assessments of credibility are to be made. Morrison J. stated in that case:

[18] Like most criminal cases, an important if not central component of the outcome is an assessment of witness credibility. In two recent decisions (*R. v. Matchett*, 2010 NBQB 80; *R. v. Storey*, 2010 NBQB 86) Justice Fred Ferguson provided an extensive and helpful analysis of the principles to be applied when assessing credibility. After reviewing these principles, Justice Ferguson summarizes the trial judge's responsibility at paragraph 78 of *R. v. Storey* (*supra*):

No longer are judges encouraged to consider demeanour evidence to be a determining or even central tool in credibility assessment. *R. v. R.G.L.*, [2004] O.J. No. 1944 (O.C.A.); *R. v. F.(S.)*, (2007), 223 C.C.C. (3d) 1 (P.E.I.S.C.A.D.) and also *R. v. T.E.*, [2007] O.J. No. 4952 (Ont. C.A.). Rather, the proper approach is to consider the evidence of a particular witness against the backdrop of the rest of the evidence led or other evidence tendered, searching for connectors that may not necessarily rise to the level of legal corroboration between witnesses, the other evidence tendered or a combination of the two in deciding what worth should be attributed to it. In the final analysis it becomes a matter of determining the veracity of the evidence utilizing the age old tools of logic, reason and common sense in measuring the probability, if it is deductible from the evidence, that the witness or witnesses' honesty on the central issue or issues is assailable.

193 As mentioned above, given Mr. Khosa is taking medication for his illness, it would not be appropriate to assess his evidence on the basis of his demeanour; however, it is nonetheless appropriate to review the reliability of his testimony, its internal consistency, and its relation to the other evidence.

X. FINDINGS

194 I find that Mr. Khosa was capable of giving proper testimony, sufficient to disagree when he wanted to, which he did on numerous occasions. I do not find that Mr. Khosa was prone to simply agreeing with Crown counsel's suggestions due to his illness. I find he was capable of agreeing or deciding not to agree with the suggestions put to him by Crown counsel as he did in fact disagree with a number of Crown counsel's suggestions.

195 I accept the evidence of Dr. Lamba on the matters he testified to. I similarly accept the evidence of Jagroop Khosa and Amandeep Bhullar and the other family members of Mr. Khosa; however, I do not find Mr. Khosa's quietness here indicative of an acute psychotic episode nor that he was exhibiting other positive symptoms of psychosis that departed from his baseline.

196 Dr. Lamba was in agreement with Dr. Riar's opinion as it was based on the office interviews of Mr. Khosa. That is, however, only if the voice Mr. Khosa heard was so strong and so harsh that it overwhelmed him, that it would be possible to establish that there had been a psychotic break.

197 I do not accept Mr. Khosa's evidence in direct that the voice was telling him that "If you want to save her, then kill her". I accept his evidence in cross-examination that, yes he did hear a voice, but only after deciding to kill her. I find he was angry and frustrated and thought it was to Amarjit Khosa's benefit to kill her but that at the same time he knew that the act was legally wrong. He also knew that, to others in the community, the act would be seen as morally wrong.

198 In Mr. Khosa's case the voices had never been commanding, never outside of his moral framework, and only conveyed a reassuring non-violent message. He was aware that other members of the Sikh community would find that his actions were wrong. Again, I accept Dr. Riar's opinion only insofar as, like Dr. Lamba's evidence indicated, only a strong voice would result in Mr. Khosa's actions.

199 Mr. Khosa's evidence given in cross-examination was that the voice came to him as a feeling and that the voice told him that his decision to kill his sister - a decision which he had already made - was okay. As a consequence, I agree with Dr. Lamba's findings that this killing was not motivated by a command hallucination. I find the killing was not a consequence of a psychotic break with reality nor the result of a rigid state, but rather motivated by anger and frustration.

200 In the case at bar, I do not find there was a strong or harsh voice directing Mr. Khosa in this case. This statement was departed from in his cross-examination. It is further inconsistent with his earlier statements, and his relating of events concerning this voice in the past. I accept and prefer Dr. Lamba's evidence that if an individual is moving into a psychotic state then there are hallmarks there for all to see. Here, they were not present. I find, apart from being quiet and withdrawn and talking to Guru Nanak as he normally did, there were no other signs that he was moving into an acute phase.

201 The collateral information which I accept, and as used by Dr. Lamba in arriving at his opinion, such as the clinical records of Dr. Uppal and Dr. Randhawa, indicate that Mr. Khosa was in a stable state of mind. There is no evidence of any move towards a state of mind such as he experienced either at the onset of his disease in 1996 or the acute stage noted in 2007.

202 Respecting Mr. Khosa's quietness and being withdrawn as testified to by his family, I do not find, given the evidence of Dr. Lamba and all the corroborating evidence regarding Mr. Khosa's illness, *inter alia*, that this being quiet and withdrawn was consistent with an acute psychotic episode. Mr. Khosa did not display the other positive symptoms that he had testified to, in accordance with the evidence of Dr. Lamba, that would depart greatly from his baseline behaviour, such as increased religious preoccupation outside of his baseline.

203 With respect to Dr. Riar, in his report he stated:

Even if he had some idea that the killing was wrong, legally, he certainly felt morally justified to perform the act. I believe that his inability to recognize the wrongness of his actions was the product of the mental disorder he suffered for many years.

204 With respect, however, that is not the test. An accused who knows and is aware, as was conceded by Mr. Khosa, that society and his religion would see the act as morally wrong, even if the accused saw it as okay to deviate from society's standards, would not meet the test in s. 16. I refer to *R. v. J.M.W.*

205 Dr. Riar testified that Mr. Khosa had arrived at a state that afternoon where he saw no other recourse than to kill his sister. He knew it was wrong but felt he had no other option. Dr. Riar, however, testified that unless he suffered a psychotic break, Mr. Khosa knew right from wrong.

206 Dr. Riar conceded that in 17 years Mr. Khosa had only followed a voice which dictated his behaviour in two instances: once to go to India to seek a cure, and the second time to quit his job because the money would be there. Never before had the voice told him to do something or agreed with him about doing something that was outside of his moral beliefs.

207 Dr. Riar testified in response to the question of Crown counsel that:

Q ... But we did talk a little bit about this feeling that God approves of it has to happen at the same time as the action for you to have the opinion you got. That's when the psychotic break has to happen.

A Yes.

208 Dr. Riar further agreed in cross-examination that in his opinion Mr. Khosa knew generally that killing was morally wrong prior to what Dr. Riar believed was a psychotic break.

209 Mr. Khosa testified, and I accept, that he knew his community would find the killing morally wrong.

210 I accept that Mr. Khosa was kind and loving towards his sister Amarjit Khosa before this incident. However, the entire family, including Mr. Khosa, was frustrated by Amarjit Khosa's behaviour and found it difficult to deal with her.

211 In cross-examination, it had been put to Mr. Khosa that he had spoken truthfully with Dr. Lamba and Dr. Riar. He admitted to Crown counsel that he had what I find to be a rational thought process and had made a decision, and that decision was to do the killing, and as noted above that was prior to receiving reassurance and hearing a voice that it was all right from his God.

212 Mr. Khosa testified and agreed in cross-examination that he was both angry and frustrated. I find that having admitted that he said to Amarjit Khosa just before the stabbing that she "had bothered too much" is completely inconsistent with killing her to save her and protect her as he asks this Court to believe. This killing was neither a scuffle nor an accident. The deceased sustained 13 stab wounds and Mr. Khosa conceded that he wanted to kill her even after she was stabbed and on the ground he continued to stab her, and he stayed to ensure she was dead before leaving quickly, driving home, cleaning the knife and his clothes.

213 I do not accept his explanation to the Court that he had simply given a different version of events to the doctors or could not remember what he told the doctors. Again, I find as he admitted to the Court in cross-examination that he was angry and frustrated with Amarjit Khosa, her behaviour towards his mother, and her actions to the rest of the family.

214 I find based on Mr. Khosa's direct evidence and the testimony of both experts that Mr. Khosa appreciated the nature and quality of his actions when he committed the act in question. He testified to the act of taking the knife from the drawer, driving to Amarjit Khosa's residence and then killing her and standing over her, stabbing her repeatedly even after she was on the floor. He knew that he was killing her and he knew at the same time that killing her was wrong. He displayed this by telling no one in the family where he was going when he left his residence to kill Amarjit Khosa, and taking the knife, hiding it, and then again hiding it following Amarjit Khosa's death after having quickly left the scene.

215 I do not accept the evidence of Mr. Khosa that he heard a voice the day of the killing saying that "If you want to save her, you must kill her". He testified he was angry and frustrated. He testified that he told his sister before he killed her that she was causing too much trouble. This is consistent with what he told Dr. Riar, that she had bothered them too much; they cannot take it anymore and that was the end of it. This killing, as I noted, was neither a scuffle nor an accident and she sustained numerous stab wounds. Again, his explanation to the Court regarding different versions or that he could not remember, I do not accept.

216 It is important to bear in mind that, as Dr. Lamba testified, the accused was under no delusions respecting his sister Amarjit Khosa. As testified to by both psychiatrists the concerns Mr. Khosa had in respect of his sister were all rationally-based and logical. Her acting out at his mother was frustrating, and a concern for the whole family. I accept from his family's testimony that the burden of looking after Amarjit Khosa fell to Mr. Khosa. I find it became too much for him to bear and after rationally weighing his options, he made the decision to go to Amarjit Khosa's residence and kill her. This was not due to his mental disorder. As noted above, I find this was due to his anger and frustration respecting his sister as well as his feeling that this was the only permanent solution.

217 Mr. Khosa had been praying that his sister would be killed, according to what he told Dr. Riar, which he denied in testimony. Mr. Khosa knew that according to his religious beliefs, killing was wrong. He testified he did not discuss his decision to kill his sister with his family because he knew they would not agree. I accept that afterwards Mr. Khosa felt increased anxiety and that he was taken in by CRESST. However, this was due to his anxiety from killing his sister, I find, and while he suffers from a disease of the mind, both parts of the test needed to establish the defence of not criminally responsible by reason of mental disorder found in s. 16 of the *Criminal Code* have not been met. That is, Mr. Khosa both understood the nature and quality of his act and that he knew it was legally and morally wrong to kill his sister.

218 I am mindful of the fact that Mr. Khosa suffers from paranoid schizophrenia. However, the fact that Mr. Khosa has been diagnosed with paranoid schizophrenia does not, by itself, mean that at the time of the killing he was incapable of making a rational decision whether or not to kill his sister and knowing that the decision would be considered wrong by a reasonable member of the community.

219 I find as a fact that Mr. Khosa said to the victim, "Amarjit, you have bothered us too much". This statement is consistent with his evidence and with acting out from anger and frustration and not irrational behaviour. To reiterate, I do not believe that Mr. Khosa sustained a psychotic break. I do not accept that Mr. Khosa killed his sister to save her or protect her from other people. I reject his evidence of that. I find that Mr. Khosa was able to make a rational choice and arrived at it after a consideration of options. Mr. Khosa knew both his family and his community would find it morally wrong. I therefore find that the defence has not met the burden to establish on the balance of probabilities that Mr. Khosa should be found not criminally responsible due to mental disorder.

220 Mr. Khosa, would you please stand. I find you guilty of second degree murder. You may be seated.

M.A. MAISONVILLE J.