

Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)
[2012] SGCA 67

Case Number : Criminal Appeal No 2 of 2012
Decision Date : 07 November 2012
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; V K Rajah JA; Philip Pillai J
Counsel Name(s) : Lau Wing Yum and Christina Koh (Attorney-General's Chambers) for the appellant; Mohd Muzammil bin Mohd (Muzammil & Co) for the respondent.
Parties : Public Prosecutor — Vitria Depsi Wahyuni (alias Fitriah)

Criminal Procedure and Sentencing

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2012\] SGHC 49.](#)]

7 November 2012

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This was an appeal by the Prosecution against a 10-year imprisonment term imposed by the High Court judge (“the Judge”) on the respondent, Vitria Depsi Wahyuni @ Fitriah (“Vitria”), for a charge of culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”). The charge to which Vitria pleaded guilty was as follows:

... sometime between 8.00 p.m. on the 25th day of November 2009 and 3.15 a.m. on the 26th day of November of 2009, at No. 21 Farleigh Avenue, Singapore, did cause the death of one Sng Gek Wah (female / 87 years old), to wit, by strangling her to death, which act was done with the intention of causing such bodily injury as was likely to cause her death, and you thereby committed an offence of culpable homicide not amounting to murder punishable under section 304(a) of the Penal Code, Chapter 224.

2 On 16 August 2012, we allowed the appeal and enhanced Vitria’s sentence to 20 years’ imprisonment with effect from 28 November 2009 (being the date of her remand [\[note: 1\]](#)). We now give our reasons.

Factual background

3 The salient facts were set out in the Statement of Facts to which Vitria admitted without qualification. Vitria, who was from Indonesia, came to Singapore on 19 November 2009. [\[note: 2\]](#) She started working for the deceased as a domestic worker on 21 November 2009. [\[note: 3\]](#) The deceased was 87 years of age at the time of her death and was living alone at No 21 Farleigh Avenue (“the residence”). Vitria was tasked to take care of the deceased and attend to the housework at the residence. [\[note: 4\]](#)

Events leading to the deceased’s death

4 The fateful incident occurred a mere five days into Vitria’s employment with the deceased.

According to Vitria, the deceased was difficult to please and particular about how the household chores were carried out. The deceased regularly reprimanded Vitria for her lapses in the household chores. On 25 November 2009, when Vitria was cleaning rusty grilles, the deceased chided her for not making them clean enough. Vitria felt angry and the thought of killing the deceased entered her mind. The deceased also called her "stupid" and "big eyes" when Vitria accidentally wet the toilet roll while washing the toilet later that day. The thought of killing the deceased recurred.

5 At 8 pm, as Vitria was preparing for bed, the thought of killing the deceased resurfaced. Although she knew that it was wrong to take a life, she felt angry at the deceased. At the time, the deceased was settling down on the sofa in the living room. At about 10 pm, Vitria stuffed two bed sheets into her pillow as she felt that her pillow was too small to smother the deceased. When Vitria found that the deceased had fallen asleep on the sofa in the living room, she placed the pillow over the deceased's face and tried to smother her. The deceased woke up and put up a struggle. The pillow fell off. Vitria then tried to strangle the deceased. The deceased fell to the floor during the struggle. Vitria then shoved her right hand into the deceased's mouth, hoping to silence her. The deceased continued to struggle and managed to push Vitria's face to one side. Vitria felt angry and reached for a vase on the coffee table. With the vase, she struck the deceased forcefully on the right side of her forehead. [\[note: 5\]](#) The deceased groaned in pain. Vitria then placed her left hand into the deceased's mouth and used her right hand to encircle the deceased's throat and pressed hard until the deceased stopped moving.

6 Vitria then removed the bed sheets from her pillow and kept them in the cupboard upstairs. Having given some thought to the situation, and to exculpate herself, she decided that she would tell the police that the deceased had died after falling in the toilet. Pursuant to that thought, Vitria dragged the deceased to the toilet. However, she later thought that this did not seem "right" and dragged the deceased back to the hall where she had originally lain. She wiped the trail of blood on the floor and the blood stains on the toilet wall with her T-shirt. [\[note: 6\]](#) She threw away her slippers, clothes, and pillow case which were all bloodstained. Vitria then "decided to put up a show and shouted for help". [\[note: 7\]](#) The next morning, on 26 November 2009 at about 3.15 am, Vitria flagged down a taxi which was then driving past the residence. Although the taxi driver could not understand what Vitria was trying to convey due to the language barrier, he presumed that she was seeking assistance and called the police. The taxi driver lodged the First Information Report stating that "Maid discovered employer's parent unresponsive". [\[note: 8\]](#) An autopsy was subsequently performed on the deceased and the cause of death was certified to be asphyxia due to strangulation. [\[note: 9\]](#) The injuries found on the deceased included multiple cuts and bruises on her face, neck and limbs, and four broken ribs. [\[note: 10\]](#)

7 Vitria was 16 years and 11 months old at the time of the offence. Although her passport and work permit stated that she was 23 years old, this was false. [\[note: 11\]](#) Vitria managed to obtain a passport in Indonesia with this false age stated therein so that she would be eligible for employment as a domestic worker in Singapore. [\[note: 12\]](#)

Psychiatric reports on Vitria

8 After her arrest, Vitria was examined by two psychiatrists. Dr Stephen Phang ("Dr Phang"), Senior Consultant Psychiatrist at the Institute of Mental Health ("IMH"), first examined Vitria on 9 December 2009, 18 December 2009, 23 December 2009 and 5 January 2010. Subsequently, Dr Parvathy Pathy ("Dr Pathy"), Senior Consultant Child Psychiatrist of the Department of Child and Adolescent Psychiatry, IMH, examined Vitria on 29 January 2010, 4 February 2010, 9 February 2010

and 12 February 2010. Both Dr Phang and Dr Pathy also interviewed Joy Chan ("Joy"), the deceased's granddaughter and *de facto* caregiver, [\[note: 13\]](#) and Binte Nur Aisyah ("Aisyah"), one of the deceased's previous domestic workers.

9 In a report dated 11 January 2010, Dr Phang noted that Vitria was a divorcee with a one-and-half-year-old son which she had left in Indonesia in the care of her former mother-in-law. Vitria's employment with the deceased was her first employment overseas. [\[note: 14\]](#) For a considerable part of her interview sessions with Dr Phang, Vitria recounted her grievances against the deceased. She particularly took offence at the deceased calling her "*bodoh*" (*ie*, "stupid" in Malay). In her first interview session with Dr Phang, Vitria admitted that the deceased never physically abused her. The circumstances under which the deceased had any form of physical contact with her were confined to instances where the deceased tapped the dorsum of her hand with a rice ladle when Vitria's assistance during meal preparation was unsolicited, or where the deceased pulled her forearm to show her the errors she made in carrying out the household chores. [\[note: 15\]](#) However, in her second interview session with Dr Phang, Vitria alleged that the deceased had kicked her buttocks after she did not switch off the living room lights, but admitted (in her third interview session) that this was the only occasion of alleged physical abuse. [\[note: 16\]](#)

10 Vitria also told Dr Phang that on the fourth day of her employment with the deceased, the deceased had allegedly suggested that Vitria return to Indonesia if she felt that she was unable to cope with the domestic chores. [\[note: 17\]](#) This comment made Vitria feel that "[her] *dignity had been trampled* [emphasis in original]". [\[note: 18\]](#) Dr Phang also noted Aisyah's complaints of the deceased's frequent nagging. However, Aisyah also stated that the deceased had never physically abused her during her employment. [\[note: 19\]](#) Joy admitted to Dr Phang that the deceased was "impatient" and could be "rather loud in her speech" as she was hard of hearing. The deceased's previous domestic workers told Joy of the deceased's tendency to nag but they did not tell her that they were at the receiving end of physical abuse. [\[note: 20\]](#)

11 As regards the death of the deceased, Vitria admitted to Dr Phang that while she killed the deceased, she maintained that the deceased had attacked her first. However, the accounts she gave at her interview sessions with Dr Phang on the events leading to the deceased's death were inconsistent. [\[note: 21\]](#) In his report, Dr Phang concluded that Vitria did not suffer from any mental illness and that "her mood was certainly not depressed" nor was she "labouring under any cognitive deficits". He found that she was "cognizant of the nature and wrongfulness of her alleged act" and was fit to plead. [\[note: 22\]](#)

12 Dr Pathy made similar observations on Vitria's family background and relationship with the deceased in her first report dated 12 February 2010. She noted that Vitria found the deceased "fussy, petty, [and] impatient". Vitria had also claimed that while she tried to meet the deceased's expectations, the deceased remained displeased with her no matter what she did. [\[note: 23\]](#) Vitria complained to Dr Pathy that the deceased called her names, but confirmed that the only instance of "physical abuse" was when the deceased kicked her buttocks after she forgot to switch off the living room lights. [\[note: 24\]](#) Joy mentioned to Dr Pathy that a total of seven domestic workers had worked for the deceased since 2003 and that conflicts had arisen between the deceased and her domestic workers because of communication problems and the deceased's expectations about cleanliness. [\[note: 25\]](#) Joy also advised Dr Pathy that Dede Siti Hodijah ("Dede"), the deceased's domestic worker before Vitria, "tried to strangle the deceased during an episode of psychotic decompensation". [\[note: 26\]](#)

[26\]](#) Dede was later admitted to IMH and diagnosed with “acute psychosis”. [\[note: 27\]](#) However, there was another domestic worker, Siti, who got along well and worked for the deceased for three years. [\[note: 28\]](#) As for Aisyah, she informed Dr Pathy that the deceased frequently nagged and called her “pig, dog, dark like Bangladeshi, poor” and on one occasion brandished the broom brush used to wash the toilet at her face whilst chiding her. [\[note: 29\]](#) Having considered everything that was told to her, Dr Pathy also found that Vitria did not suffer from any mental illness and opined that she was fit to plead. [\[note: 30\]](#)

13 Subsequently, Dr Pathy was asked to do a reassessment of Vitria. For that purpose, she examined Vitria on 20 May 2011, 24 May 2011 and 31 May 2011 and took into account the clinical observations made by the medical staff at Changi Women’s Prison of Vitria’s behaviour while in remand. During her interview sessions with Dr Pathy in May 2011, Vitria gave yet another account of the events leading to the deceased’s death. Vitria maintained that this final account was the truth, and that her previous accounts of the offence were not true. [\[note: 31\]](#) Vitria said that she felt that she should tell the truth even though this could lead her to being charged with an offence which carried a heavier sentence. [\[note: 32\]](#) The Statement of Facts was based on this final account given by Vitria. Dr Pathy issued a second report on 2 June 2011 where she opined that: [\[note: 33\]](#)

... [Vitria] had lived a relatively slow and relaxed lifestyle back home. ... [Vitria] reported experiencing an impatient, demanding and difficult to please employer who allegedly regularly scolded and criticised her for minor lapses in her performance. ... [Vitria] often felt unsure of the deceased’s expectations of her as a maid... This led to tension and conflict between the two parties and resentment and anger within [Vitria], culminating in the alleged act. ...

The youth of [Vitria], with its increased tendency for poor impulse control, low frustration tolerance and immature and poor problem solving skills, is another factor that probably tipped the balance, culminating in the tragic act. [Vitria’s] relatively lower level of intelligence, (Full Scale Score of 63, as reported by our clinical psychologist in the previous psychiatric report dated 12.2.10) which can also lead to poor problem solving skills, is an added factor that led her to choose an inappropriate and tragic solution to her difficulties with her employer.

The Judge’s decision

14 The Judge noted the submissions of the Prosecution and the defence counsel on the question of the appropriate sentence to be imposed. The Prosecution emphasised that there were multiple aggravating factors in this case. Vitria had committed the offence “after deliberation and with premeditation as opposed to the situation where it [was] done on the spur of the moment ‘in hot blood’”. The injuries inflicted on the deceased evinced Vitria’s “cruel streak”. The Prosecution also emphasised that Vitria attacked a vulnerable victim – an elderly woman who was supposed to be in her care – and even took steps to conceal her offence. [\[note: 34\]](#) The Prosecution also pointed out that amendments were made to s 304(a) of the Penal Code (with effect from 1 February 2008) to allow the court to sentence Vitria to an imprisonment term of up to 20 years or to life imprisonment (“the current s 304(a)”). Prior to these amendments, s 304(a) of the Penal Code provided that culpable homicide not amounting to murder was punishable with up to 10 years’ imprisonment or life imprisonment (“the previous s 304(a)”). The Prosecution pressed for a 20-year imprisonment sentence to be meted out.

15 On the other hand, counsel for Vitria, Mr Mohd Muzammil bin Mohd (“Mr Muzammil”), emphasised that Vitria regretted her actions and that she had pleaded guilty. She was only about 16 years and 10

months old at the time of the offence. As a young girl whose entire life was spent in a rural country, she was under great stress in her new urban environment in Singapore, made worse by her employer's frequent scolding and insults.

16 In determining the proper punishment, the Judge had regard to Dr Pathy's opinion (in her second report dated 2 June 2011) that Vitria's youth and her poor impulse control, coupled with her poor problem solving skills and relatively lower level of intelligence "led her to choose an inappropriate and tragic solution to her difficulties with her employer". [\[note: 35\]](#) In imposing a 10-year imprisonment term to take effect from 28 November 2009, the Judge explained that:

... although the law has now increased one part of the punishment from 10 years to 20 years imprisonment, it does not follow that the sentence for an offence under s 304(a) [of the Penal Code] must necessarily be increased. It may in the appropriate case, but in my view, I do not think that this case merits a higher sentence than the case of *Public Prosecutor v Juminem and Another* [2005] 4 SLR(R) 536, even though that case was under the pre-amendment s 304(a).

The Prosecution's arguments on appeal

17 The Prosecution submitted that a 10-year imprisonment term was manifestly inadequate. It pointed out that the Judge failed to accord sufficient weight to the sentencing considerations of general deterrence and the protection of the public. The Judge also erred in law and in fact in failing to appreciate the relevant sentencing precedents, and taking the view that a higher sentence than that imposed in *Public Prosecutor v Juminem and Another* [2005] 4 SLR(R) 536 ("*Juminem*") was not warranted. A very material difference in the circumstances between the present case and those in *Juminem* was overlooked. The accused in *Juminem* was found to be labouring under an abnormality of mind which had substantially impaired her mental responsibility at the time of the offence whereas Vitria was not suffering from any such abnormality of mind at the time of the offence. The Prosecution also argued that the Judge failed on the one hand to give sufficient weight to the aggravating factors present in this case and on the other hand placed undue weight on Vitria's personal circumstances. In this regard, we would also underscore the fact that even though Vitria was given Joy's mobile phone number, never once did she call Joy to seek her help to solve her problems with the deceased (see also *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 ("*Purwanti CA*") at [43] and [45]).

The respondent's case

18 Mr Muzammil urged this court to consider Vitria's young age at the time of the offence. Vitria had been brought up in a rural environment where the pace of life was slower. He emphasised that Vitria's lower level of intelligence and immaturity did not equip her with the ability to withstand the stress she was subjected to. [\[note: 36\]](#) Mr Muzammil submitted that the cases in which the courts had imposed the sentence of life imprisonment on domestic workers who killed their employers under the previous s 304(a) such as *Public Prosecutor v Sundarti Supriyanto (No 2)* [2004] SGHC 244 ("*Sundarti*") and *Purwanti CA* were distinguishable. Mr Muzammil pointed out that in *Sundarti* and *Purwanti CA*, the injuries on the victims were extensive and the accused persons in those two cases had gone out of their way to mask their involvement in the offence. In contrast, Vitria's actions subsequent to the death of the deceased were really done out of panic. [\[note: 37\]](#)

Our analysis

Legal principles on appellate review of sentences

19 At this juncture we will allude briefly to the legal principles which govern appellate review of sentences. An appellate court should not ordinarily disturb the sentence imposed by the trial court unless it is satisfied that: (a) the trial judge has erred with respect to the proper factual basis for sentencing; (b) the trial judge has failed to appreciate the materials placed before him; (c) the sentence is wrong in principle; or (d) the sentence is manifestly excessive or manifestly inadequate as the case may be (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12] (“*UI*”). A sentence will be regarded as unjustly lenient or severe where “substantial alterations rather than minute corrections [are necessary] to remedy the injustice” (*Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22] affirmed in *UI* at [13] and *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [83]). The “mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient to compel the exercise of its appellate powers” (*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [14]). While sentencing precedents should not be applied “rigidly or religiously” (*Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24]), this court, in relation to a lower court departing from established sentencing precedents, held in *UI* at [17] that:

... it would not be proper for a trial judge to depart from [sentencing] precedents without, at the very least, giving cogent reasons as to why they should not be applied in the case before him. This approach is based on two basic principles. The first is that a lower court should respect the guidance given by a higher court in similar cases, even though the judge may not personally agree with the views of the higher court. ... The second principle, ..., is that like cases should be treated alike. ...

Sentencing considerations

20 We agree with the views expressed by the High Court in *Public Prosecutor v Purwanti Parji* [2004] SGHC 224 (“*Purwanti HC*”) that the sentencing considerations of retribution and deterrence are particularly relevant in cases of physical violence committed within the domestic worker-employer relationship and would quote in particular [21] and [44] thereof:

21 ... The sanctity of hearth and home should be respected and preserved in such a manner that both household members and domestic workers enjoy secure expectations and total peace of mind that physical violence in any form is alien and wholly impermissible in the context of their relationship. ...

...

44 It bears reiterating at this juncture that domestic workers who resort to violence and/or retaliatory conduct should, like violent and abusive employers, expect nothing less than severe condemnation and harsh deterrent sentences. ...

The views of the High Court were affirmed on appeal in *Purwanti CA*, where this court held (at [40]–[41]) that:

40 The trial judge expounded on the uniqueness of the employer-domestic worker relationship at some length. We do not wish to belabour the point, except to say that public interest demands, because of our peculiar reliance on foreign domestic workers, that both employers (and their family members) and domestic workers alike must be able to enjoy peace of mind being served and serving, as the case may be, in the safe confines of a domestic setting for the duration of their relationship. Being a dissatisfied party to this relationship does not give that party the prerogative to resort to inflicting violence against the other party.

41 Our courts have constantly endeavoured to protect domestic workers from abusive employers, and severe deterrent sentences have been meted out to employers who abuse them. Conversely, the court should also protect employers and their family members from domestic workers who turn violent on them. Accordingly, deterrent sentences should also be meted out to such domestic workers. Only then can it be said that this relationship of mutual expectations, trust, and reliance is upheld, and that the public interest is served.

We need only reiterate that we fully endorse these views expounded in *Purwanti HC* and *Purwanti CA*. The element of public interest in relation to such offences cannot be overemphasised.

Amendment to the penalty provisions under s 304(a) of the Penal Code

21 The present case was the first involving a domestic worker charged under the current s 304(a) for causing the death of her employer. The previous s 304(a) provided that culpable homicide not amounting to murder:

shall be punished with imprisonment for life or imprisonment for a term which may extend to 10 years..., if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

The current s 304(a), which was brought into being by the Penal Code (Amendment) Act 2007 (Act No 51 of 2007), provides that:

304. Whoever commits culpable homicide not amounting to murder shall be punished —

(a) with imprisonment for life, or imprisonment for a term *which may extend to 20 years*, and shall also be liable to fine or to caning, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or

...

[emphasis added in italics]

22 Prior to this amendment, the courts had in several cases lamented that the sentencing provisions under the previous 304(a) left the courts with limited discretion to calibrate sentences according to the culpability of the offender. As an example, in *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679, this court noted that:

38 ... With the life sentence now being a sentence for the remainder of the convicted person's natural life, the range of sentencing options are very limited. If the trial judge does not wish to impose a sentence of life imprisonment (which carries a minimum of 20 years, but which, as in the present case, may extend to over 50 years), he must impose a sentence of up to ten years' imprisonment (which, with remission, would amount to a sentence of up to seven years' imprisonment).

...

40 In a situation in which the court is desirous of a sentence greater than ten years, but feels that a sentence of life imprisonment is excessive, we have no choice but to come down, however reluctantly, on the side of leniency. Otherwise, the punishment imposed would significantly exceed the offender's culpability. It would, in our view, be wrong to adopt an approach in which

the court would prefer an excessive sentence to an inadequate one.

Similarly, in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 707 (“*Constance Chee*”), where the High Court was grappling with the question of whether a 10-year imprisonment term or life imprisonment should be imposed on a mentally unstable offender charged under the previous s 304(a), the court noted at [29] that:

... The current position, where the courts are neither empowered nor endowed with any discretion whatsoever to customise or tailor their sentences in a manner that would be consistent with either the possible recovery or decline of the medical condition of an offender who is unwell, is far from satisfactory. Judges often have to choose between a rock and a hard place when resolving their colliding instincts in determining the appropriate sentence. ...

23 The huge disparity between a 10-year imprisonment term and life imprisonment (which, after *Abdul Nasir bin Amer Hamsah v Public Prosecutor* [1997] 2 SLR(R) 842, meant imprisonment for the rest of the accused person’s natural life) under the previous s 304(a) made it difficult for the court to apply the proportionality principle and deal with the culpability of the offender in a more nuanced fashion (see *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 at [21]). Courts often resolved any doubt as to the appropriateness of life imprisonment or a 10-year imprisonment term in favour of the accused (eg see *Constance Chee* at [21] and *Public Prosecutor v Rohana* [2006] SGHC 52 (“*Rohana*”) at [12], a case which is discussed below at [29]). This was so even if a 10-year imprisonment term could have been seen as lenient having regard to the nature of the accused’s acts. Parliament noted the dilemma faced by the courts and enacted the current s 304(a) of the Penal Code to accord to the courts a greater range of discretion in calibrating sentences according to the facts of each case (*Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 83 at cols 2216–2217):

... the revised section 304(a) ... allows the Court to sentence an offender who was convicted for culpable homicide not amounting to murder to either (i) up to 20 years’ imprisonment, or (ii) life. This is an immense improvement over the old section 304(a) which allowed judges the discretion to sentence an offender up to 10 years or life, but nothing in between. What made the old position even more ineffective was the wide gap between life imprisonment (interpreted as the remainder of the offender’s natural life) and the relatively short alternative of “up to 10 years”. The amendment has remedied this. It gives the Court flexibility when sentencing offenders, especially those who need to be imprisoned for a length of time between 10 and 20 years. The judgments in the case of *Tan Kei Loon Allan* [1999] 2 SLR 288 and the more recent case of *Chee Cheong Hin Constance* [2006] 2 SLR 707/[2006] 2 SLR 24, displayed the need to give the Courts more discretion to deliver punishments which match culpability. The new section 304(a) achieves this.

Sentencing precedents

24 Under the previous s 304(a), it appeared that the courts were inclined to impose a 10-year imprisonment term where the accused committed the act out of a loss of self-control, or in spontaneous response to the employer’s provocation or abuse, or where the accused committed the offence while suffering from a mental abnormality that was transient and could be addressed with proper medical treatment. On the other hand, life imprisonment was meted out in cases where the accused’s acts were premeditated, or where the accused was of unstable or of violent character and likely to re-offend. Courts also considered the extent of abuse suffered by the domestic worker and whether the domestic worker “tried to seek redress for his or her grievance through a proper and legitimate channel” (see *Purwanti CA* at [43]).

25 In *Purwanti CA*, the accused was sentenced to life imprisonment after pleading guilty to a charge under the previous s 304(a). She was 17 years and 10 months old at the time of the offence. The deceased was her employer's 57-year-old mother-in-law. On 4 August 2003, in the midst of doing household chores and while the deceased was asleep, the accused contemplated killing the deceased. The accused strangled the deceased and pressed on the deceased's eyes. The deceased struggled and fell off the bed and hit her head against the bedside table, and thereafter lost consciousness. The accused then cut the deceased's right wrist and placed a knife in the deceased's left hand to make it look like the deceased had committed suicide. Having noticed that she had left nail marks on the deceased's neck, she cut her fingernails. Thereafter she called the police and lied that the deceased refused to come out of the room and intimated that the deceased was going to hurt herself. This court upheld the life imprisonment term meted out by the trial judge. The accused was an "unstable character" and had acted out of "ill feelings and resentment that festered because of her brittle and immature temperament" (at [23]). Her acts were premeditated and she "had the presence of mind to do several things to dissociate herself systematically from the homicide" (at [27]–[28]). The deceased was a relatively elderly and vulnerable victim who was caught by surprise by the accused's attack and was defenceless. There was no cogent evidence that the deceased had physically abused the accused. The accused person's young age was found to be of limited mitigating value in this case.

26 A life imprisonment term was also imposed on the accused in *Sundarti*. The accused was a 23 year-old Indonesian domestic worker who was charged with murder. The trial judge accepted that the deceased, who was the accused's employer, had subjected the accused to some measure of ill-treatment including depriving her of food (see *Public Prosecutor v Sundarti Supriyanto* [2004] 4 SLR(R) 622 at [142] and [178]). On the fateful day, a series of arguments took place between the accused and the deceased. A fight ensued during which the accused stabbed the deceased. The accused then set the crime scene on fire to attempt to conceal her crime. The trial judge convicted the accused of a lesser charge of culpable homicide not amounting to murder after finding that the plea of grave and sudden provocation was made out. However, the court felt that a 10-year term would be manifestly inadequate given the nature of the injuries inflicted on the deceased and the manner in which the accused had tried to mask her offence. The court noted that "having regard to the fact that there [was] no middle range of sentence between ten years and life imprisonment", a sentence of life imprisonment was appropriate (*Sundarti* at [9]).

27 In *Juminem*, the first accused was sentenced to life imprisonment, and the second accused, to 10 years' imprisonment. The first accused was an 18-year-old domestic worker from Indonesia who worked for the 47-year-old deceased. The second accused was employed by the deceased's ex-husband and she was 15 years of age at the time of the offence. About six months into her employment, the first accused formed the intention to kill the deceased. She complained that the deceased had verbally and physically abused her. She asked the second accused to help her to kill the deceased. On the fateful night the two accused persons met on the ground floor of the block of flats where the deceased resided. Together they went into the deceased's flat and entered her bedroom. The first accused covered the deceased's face with a pillow while the second accused tied the deceased's feet. They jumped on the deceased's abdomen, and took turns hitting the deceased with a bottle of wine. They then strangled the deceased. The trial judge found that the plea of diminished responsibility was made out for both accused persons. He accepted the expert evidence that the first accused was suffering from a depressive disorder. The trial judge found that while the deceased did not physically abuse the accused persons, "the few instances of pushing or tapping... on the head" proved too much for the first accused person's fragile mind to bear (*Juminem* at [32]–[33]). As for the second accused, the trial judge found that her "ability to rationalise or will herself out of the crime was impaired by her youth, sedate personality, low intellectual capacity, and depressive illness" (*Juminem* at [37]). The trial judge sentenced the first accused to life imprisonment

and the second accused to 10 years' imprisonment. While the court did not issue any reasons for the difference in the sentences imposed on the accused persons, it is possible that the first accused received a harsher sentence because she had planned the crime and had persuaded the second accused, who was found to be easily "led along", to aid her.

28 The accused in *Public Prosecutor v Barokah* [2008] SGHC 22 ("*Barokah*") was also sentenced to life imprisonment. She was a 26-year-old Indonesian domestic worker who pleaded guilty to an offence under the previous s 304(a) for causing the death of her 75-year-old employer. On the night of the incident, the deceased scolded the accused for leaving the flat late at night to meet her boyfriend. A verbal exchange ensued, which escalated into a struggle between the accused and the deceased. The deceased fainted after hitting her head against the wall. The deceased's husband woke up, saw the deceased lying unconscious on the floor and left the house to seek help. The accused then carried the unconscious deceased and pushed her out of the window. The court found that the accused's thought process before and after the killing was collected, despite the fact she was undergoing depression and had a dependent personality disorder (*Barokah* at [59]). While the accused did not plan to kill the deceased before they started fighting, she had time to reflect on the incident after the deceased became unconscious. The act of pushing the deceased to her death was not an act in "a continuum of the struggle" (*Barokah* at [57]). In addition, the crime was perpetuated in the very place that the deceased felt most secure and by a person in whom a significant amount of trust was reposed (*Barokah* at [58]). There was no ill treatment of the accused by the deceased (*Barokah* at [17]). The court found that "there was little prospect of amelioration of her dependent personality disorder", and was of the view that there was a likelihood she would re-offend (*Barokah* at [60]–[61]). The sentence of life imprisonment was upheld by this court on 21 August 2009.

29 In contrast to the accused persons in *Purwanti* and *Sundarti*, the accused in *Rohana* was sentenced to 10 years' imprisonment for killing her 39-year-old employer by manual strangulation. The accused was a 21-year-old Indonesian domestic worker who pleaded guilty to a charge under the previous s 304(a). On the fateful day, the deceased came to wake the accused at 7 am, but the accused continued to lie on her mattress. The deceased scolded the accused and pushed her right cheek. A scuffle ensued and the accused hit the deceased on the head with a large ornamental stone. When the deceased got up and tried to call her elder daughter, the accused hit the deceased's head with such force that the stone broke. The accused covered the deceased's mouth to stop her from shouting, and hit her with a piece of the broken stone again. The neighbours heard the deceased's call for help and rang the doorbell. The accused then dragged the deceased to the toilet and later to the storeroom. The deceased tried to plead with the accused, but the accused refused to accept her apology and squeezed the deceased's throat until she stopped moving. The accused then lied to the deceased's neighbours that she could not open the door as her employer was still sleeping. When the police arrived, the accused hurriedly tried to clean up the crime scene. In this case, the three conditions enunciated in *R v Hodgson* (1968) 52 Cr App R 113 for a life imprisonment term to be imposed were satisfied. However, a factor which weighed heavily in the mind of the judge (see *Rohana* at [12]) was that if he were to sentence the accused to life imprisonment, it would mean that the accused would be imprisoned for the remainder of her natural life which he thought was excessive in the circumstances of the case given that a young offender was involved. The court noted that a key distinguishing factor (from cases like *Purwanti*, *Sundarti* and *Juminem*) was that the accused's actions were not premeditated, and while she had tried to conceal her crime, it was not in the same manner as the accused in *Sundarti*. Most of the 75 external injuries inflicted on the deceased were minor. The accused also suffered from an abnormality of mind when she committed the offence and qualified for a plea of diminished responsibility (*Rohana* at [15]).

30 In *Public Prosecutor v Tri Lestari* (Criminal Case No 14 of 2008, unreported) ("*Tri Lestari*"), the accused was a 24-year-old domestic helper who pleaded guilty to a charge under the previous s

304(a). She was sentenced to 9 years' imprisonment for smothering the 70-year old mother of her employer to death with a pillow. She was employed by the deceased's son and his wife ("Han") to take care of the deceased who had serious medical ailments. The accused alleged that the deceased had verbally abused her and deprived her of food and sleep. The accused complained to Han about the deceased's treatment, but the deceased's attitude towards her did not change even after Han spoke to the deceased. The accused also alleged that the deceased hit her with a walking stick on a few occasions. The fateful incident happened about 10 days after the accused was employed. [\[note: 38\]](#) The deceased woke the accused at about 3 am that morning. As the accused was rolling her mattress up, the deceased hit the accused on the back of her head with her hand. The deceased shouted at her to turn on the television. The deceased then took a photograph of the accused's younger brother from the accused's belongings, tore it and threw it out of the window. When the accused cried, the deceased told her "Diam Babi" (*ie*, "quiet pig" in Malay) and threw a pillow at her face. The accused felt very hurt and angry. She pushed the deceased onto the bed and pressed the deceased's face with the pillow until the deceased became motionless. The psychiatrist opined that the accused had a severe depressive episode, and qualified for a plea of diminished responsibility. Her depression coupled with the deceased's regular scolding drove her to despair and the deceased's act of tearing the photograph was the last straw. While the court did not issue any written grounds for the sentence imposed, it seemed to us that the lack of premeditation on the part of the accused, the fact that there was provocation on the part of the deceased and the further fact that the accused was diagnosed by the psychiatrist to be suffering, at the time of the crime, from a depressive disorder constituting an abnormality of mind which substantially impaired her mental responsibility, could have influenced the court's decision.

The present case

31 It would be apparent from the discussion above that the question of appropriate sentence is fact-sensitive and would depend on the range of punishment prescribed by law for the offence. We have in [3] to [13], [17] and [18] above set out the factual matrix, the aggravating factors and Vitria's personal circumstances. Other than the fact that Vitria was of a young age at the time of the offence, there were really no circumstances which could mitigate her crime. Indeed this was a case of a premeditated killing. Her culpability was similar to that of the accused in *Purwanti CA*. As was the situation in *Purwanti CA*, there was no evidence that the deceased in this case subjected Vitria to any serious physical abuse. We recognised that the deceased was, taking Vitria's case at its highest, an employer who was particular as to how the household chores should be done and could have been impatient with Vitria at times. Her expectations of how the household chores should be carried out might have been difficult for Vitria to meet. We also accept that the deceased could have resorted to name-calling at times, as Aisyah, the deceased's previous domestic worker, similarly alleged. However, we were hard pressed to find that any of the instances of alleged mistreatment raised by Vitria which could amount to "physical abuse". Moreover, unlike the domestic workers in *Sundarti* and *Tri Lestari*, Vitria admitted that she was given three meals daily and had sufficient rest. Vitria was permitted to retire at 8 or 8.30 pm and wake up at 5.40 am each day. [\[note: 39\]](#) In this regard, we noted that at the maid agency, Vitria had to wake up daily at 4 am and could only retire at 10 pm. [\[note: 40\]](#)

32 We could not ignore the fact that Vitria's acts were premeditated and were not committed "in hot blood". Everything was planned.. The thought of killing the deceased recurred in Vitria's mind throughout the day after she was scolded for her lapses in the household chores. Much time had elapsed between the deceased scolding her and her deliberate action to kill the deceased. She waited till the deceased was asleep before attacking her, intending to catch her defenceless and at her most vulnerable moment. Vitria even considered that her pillow was too small to smother the deceased and thus stuffed it with two bed sheets. After she strangled the deceased, Vitria remained calm and

composed as she disposed of the bloodstained items. She had the presence of mind to consider how to conceal her crime and admitted to putting up a “show” by getting help from the driver of a passing taxi (see [6] above). This was unlike those cases where the domestic worker’s acts were in spontaneous response to some provocation (though not necessarily grave and sudden) from the employer or where the intention to kill was only formed while the domestic worker was engaged in a fight with the employer or the employer’s relative. Instead, as Dr Phang opined, Vitria’s difficulty with the deceased stemmed from conflicts over “trivial domestic issues” and “her inability to accept that the deceased had certain specific expectations of her, in respect of the performance of the household chores”. [\[note: 41\]](#)

33 We also noted that unlike the domestic workers in *Juminem* and *Rohana* who qualified for a plea of diminished responsibility, both Dr Phang and Dr Pathy found that Vitria did not suffer from any mental illness or abnormality of the mind. Instead, as Dr Pathy opined in her 2 June 2011 report, it was Vitria’s immaturity and low tolerance for frustration that could have led her to choose “an inappropriate and tragic solution to her difficulties with her employer” (see [13] above). This was not, however, a sufficient excuse for the disproportionality of Vitria’s response. Although Dr Pathy assessed Vitria to be of an “Extremely Low range of intelligence”, it was not disputed that Vitria was aware of the nature and wrongfulness of her acts when she committed the offence and demonstrated thought and planning in committing the offence. [\[note: 42\]](#) While Mr Muzammil urged us to have regard to the fact that Vitria pleaded guilty and was remorseful, in the circumstances of this case, we were of the view that this factor was of limited mitigating value. In this regard, we ought to add that Vitria attempted to conceal her crime and in furtherance of that end gave a number of untruthful accounts of the incident to the police and the psychiatrists that examined her, maintaining initially that the deceased had attacked her first. Vitria admitted to the truth only in May 2011, some 18 months after the incident, during her interview sessions with Dr Pathy. Equally pertinent were Dr Phang’s observations in his report that Vitria had initially “appeared to feel a sense of justification for her act of killing the deceased” and “conveyed an air of nonchalance... as well as egocentricity and a sense of entitlement” as to her offence. [\[note: 43\]](#)

34 While Vitria could have sought help from Joy, the deceased grand-daughter, she chose not to do so. In her Victim Impact Statement dated 13 February 2012 (which was admitted into evidence before the Judge [\[note: 44\]](#)), Joy stated that she was the contact person with regard to Vitria’s employment arrangements [\[note: 45\]](#) and had previously intervened to resolve difficulties that had arisen between Vitria and the deceased. She stated that the deceased had informed her on 22 November 2009 that Vitria did not want to work after paying off her loan with the maid agency. Joy called the maid agency and was advised to draw up a work schedule for Vitria. She did so and ensured that Vitria understood the schedule. Joy also gave Vitria her mobile phone number and asked Vitria to call her if there were issues that needed Joy’s attention. Vitria assured Joy that she would complete her two-year contract with the deceased. In fact, on 25 November 2009 (the day on which the offence was committed), Joy visited the residence as the deceased had complained that the metal sliding door of the residence was not functioning properly. Vitria did not say anything about the events that transpired that day to Joy even though Joy tried to engage her in small talk. [\[note: 46\]](#) No complaint against the deceased was uttered by Vitria to Joy. Instead, Vitria took matters into her own hands and chose a wholly inappropriate and disproportionate response to her difficulties with the deceased.

Our determination

35 For the foregoing reasons, we were of the view that the appeal should be allowed because the

sentence of 10 years' imprisonment imposed by the Judge was manifestly inadequate. While we agreed with him that the increase in sentencing range under the current s 304(a) should not *per se* warrant the imposition of a higher sentence, and that the punishment imposed must still reflect the gravity of the offence, we were of the view that in this case the Judge had failed to give sufficient weight to the culpability of the offender, and particularly, the aggravating circumstances. The Judge failed to give sufficient consideration to the need for deterrence in the interest of the public. Many families in Singapore engage domestic workers to care for their elderly. As this court underscored in *Purwanti CA* (at [40]), it is absolutely essential that employers and their family members, as well as the domestic workers themselves, are able to "enjoy peace of mind being served and serving... in the safe confines of a domestic setting for the duration of their relationship". Thus an appropriately stiff sentence must be imposed on any party in such a relationship who resorts to deliberate, disproportionate and not immediately provoked violence. A loud and clear message must be sent out that the courts will not tolerate any such domestic violence. Here was an 87-year old lady who was hard of hearing and prone to speak loudly. Vitria breached the trust and confidence the deceased reposed in her in the most monstrous manner when she cold-bloodedly killed her charge. In *Purwanti CA* (at [30]), this court opined that a person who commits an offence against a vulnerable and defenceless person ought to be more severely dealt with by the court. Vitria's culpability was similar to the accused in *Purwanti CA* (see [31] above). The current s 304(a) gives the court the flexibility to impose a sentence which will fall within the wide gulf between life imprisonment and a 10-year imprisonment term (unlike the position under the previous s 304(a)). Accordingly, all things considered, we enhanced Vitria's sentence to a 20-year imprisonment term to take effect from the same date as ordered by the Judge, *viz*, 28 November 2009.

[\[note: 1\]](#) Certified Transcript (HC), 7 Mar 2012, p 1

[\[note: 2\]](#) Dr Pathy's Feb 2010 report (attached to Statement of Facts ("SOF")), para 4

[\[note: 3\]](#) Joy Seow's Victim Impact Statement ("Joy's Statement"), para 4

[\[note: 4\]](#) SOF, paras 4-5

[\[note: 5\]](#) SOF, para 22

[\[note: 6\]](#) SOF, para 23

[\[note: 7\]](#) SOF, para 24

[\[note: 8\]](#) SOF, paras 7-9

[\[note: 9\]](#) SOF, para 26

[\[note: 10\]](#) Autopsy report dated 5 January 2010 (attached to SOF)

[\[note: 11\]](#) SOF, para 3

[\[note: 12\]](#) SOF, para 3

[\[note: 13\]](#) Dr Phang's report (attached to SOF), para 22

[\[note: 14\]](#) Dr Phang's report, para 4

[\[note: 15\]](#) Dr Phang's report, para 11

[\[note: 16\]](#) Dr Phang's report, para 13

[\[note: 17\]](#) Dr Phang's report, para 15

[\[note: 18\]](#) Dr Phang's report, para 15

[\[note: 19\]](#) Dr Phang's report, para 25

[\[note: 20\]](#) Dr Phang's report, para 24

[\[note: 21\]](#) Dr Phang's report, paras 13–18

[\[note: 22\]](#) Dr Phang's report, para 33

[\[note: 23\]](#) Dr Pathy's Feb 2010 report, para 10

[\[note: 24\]](#) Dr Pathy's Feb 2010 report, para 11

[\[note: 25\]](#) Dr Pathy's Feb 2010 report, para 15

[\[note: 26\]](#) Dr Pathy's Feb 2010 report, para 15

[\[note: 27\]](#) Dr Pathy's Feb 2010 report, para 13

[\[note: 28\]](#) Dr Pathy's Feb 2010 report, para 15

[\[note: 29\]](#) Dr Pathy's Feb 2010 report, para 12

[\[note: 30\]](#) Dr Pathy's Feb 2010 report, para 35

[\[note: 31\]](#) SOF, para 34; Dr Pathy's June 2011 report, para 27

[\[note: 32\]](#) Dr Pathy's June 2011 report, para 27

[\[note: 33\]](#) Dr Pathy's June 2011 report, paras 31– 32

[\[note: 34\]](#) The Judge's GD at [1]; Prosecution's Submissions on Sentence (HC), paras 19–23

[\[note: 35\]](#) The Judge's GD at [4]; Dr Pathy's June 2011 report, para 32

[\[note: 36\]](#) Respondent's submissions, para 8

[\[note: 37\]](#) Respondent's submissions, para 29

[\[note: 38\]](#) Respondent's List of Authorities, Tab E, para 7

[\[note: 39\]](#) Dr Phang's report, para 14; Dr Pathy's Feb 2010 report, para 10

[\[note: 40\]](#) Dr Phang's report, para 15

[\[note: 41\]](#) Dr Phang's report, paras 11, 12 and 15

[\[note: 42\]](#) SOF, para 19; Dr Pathy's Feb 2010 report, para 33; Dr Pathy's June 2011 report, para 28

[\[note: 43\]](#) Dr Phang's report, para 27

[\[note: 44\]](#) The Judge's GD at [1]

[\[note: 45\]](#) Joy's Statement, para 4

[\[note: 46\]](#) Joy's Statement, paras 9–12