Public Prosecutor *v* Firdaus bin Abdullah
[2010] SGHC 86

Case Number : Magistrate's Appeal No 144 of 2009

Decision Date : 17 March 2010

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ

Counsel Name(s) : Lau Wing Yum and Chan Huimin (Attorney-General's Chambers) for the appellant; Derek Kang Yu Hsien (Rodyk & Davidson LLP) for the respondent.

Parties : Public Prosecutor — Firdaus bin Abdullah

Criminal Law

Criminal Procedure and Sentencing

17 March 2010

Chan Sek Keong CJ:

1 This was an appeal by the prosecution against the sentences imposed by the District Judge ("the DJ") on the respondent for three offences for which he was convicted on 19 May 2009.

2 The first charge, DAC 40614/2008, was for voluntarily causing grievous hurt to a three-year-old boy ("the child") on 14 January 2008, punishable under s 325 of the Penal Code (Cap 224, 1985 Rev Ed), by causing the child to sustain head injury of intracranial haemorrhage which endangered his life. In fact, the child died from this injury. Prior to the 2007 amendments to the Penal Code which came into effect on 1 February 2008 (*ie*, after the date of the offence), the prescribed punishment for this offence was imprisonment for a term which might extend to seven years and a fine or caning. The respondent was sentenced to six years' imprisonment and 12 strokes of the cane on this charge.

3 The second charge, DAC 40615/2008, was for ill-treating the child by punching the child in the head with great force on 12 January 2008, an offence under s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("the CYPA") and punishable under s 5(5)(*b*) of the same. The prescribed punishment for this offence was a fine of up to $4,000 or imprisonment for a term not exceeding four years or to both. The respondent was sentenced to one year's imprisonment on this charge.

4 The third charge, DAC 40616/2008, was also under s 5(1) of the CYPA and punishable under s 5(5)(*b*) of the same, and was for ill-treating the child by grabbing, shaking and biting the child's penis and scrotum on 14 January 2008. The respondent was sentenced to one year's imprisonment for this charge.

5 The DJ ordered the sentences for the first and third charges to run concurrently but the sentence for the second charge to run consecutively. Thus, in total, the respondent was sentenced to seven years' imprisonment and 12 strokes of the cane. The prosecution was dissatisfied with the sentences imposed and appealed on the ground that they were manifestly inadequate. I allowed the appeal in part on 6 October 2009 and now give my reasons for doing so.

Background facts

6 The respondent was a 27-year-old Singapore citizen with no prior criminal record. The child was born on 14 January 2005. His biological father abandoned the family sometime in May 2007. At the time of the offences, the child was living with his mother and the respondent, with whom his mother had a relationship. His mother was undergoing divorce proceedings with the child's biological father, and the respondent had agreed to be the child's stepfather pending the divorce. Whenever the child's mother was not around, it was the respondent who was in charge of taking care of the child.

7 According to the child's mother, the respondent's relationship with the child was initially warm, but this changed after the respondent grew increasingly jealous of the mother's attention towards the child. She testified that she noticed a scar on the child's forehead in December 2007, which the respondent claimed the child sustained from a fall whilst running about. She also testified that the respondent bit the child on his right shoulder in December 2007, but claimed that it was only a "biting game" they had been playing when she confronted him.

8 The circumstances of the offences were gleaned from the respondent's statements to the police. After an initial challenge to the statements through a trial within a trial, the DJ admitted the statements and recorded the following facts.

9 On 12 January 2008, the respondent was asked by the child's mother to clean the child's diapers after he had soiled himself. After the washing, the respondent asked the child to walk out of the bathroom so that the respondent could dry him off with a towel. The child started to cry but stopped after being told to keep quiet by the respondent. However, the child resumed crying again in the midst of being dried off. This time, the respondent's efforts at pacifying the child failed, and he punched the child on the back of his head in a fit of anger. These actions formed the basis of the second charge.

10 On 14 January 2008 at about 7.30am, the child's mother left home to attend to her divorce proceedings at the Syariah Court. The child started crying when he saw his mother preparing to leave the house. His mother tried to pacify him by asking him to give her a kiss and hug. He kissed and hugged her once before she left (she testified that there were no injuries on the child at the time). The child continued crying for another five minutes after she had left the flat before eventually stopping. The respondent went back to sleep. Shortly after, the child tapped the respondent on the shoulder and asked to play with his toys. The respondent nodded in reply and the child went to the bedroom with his toys while the respondent went back to sleep in the living room. About 15 minutes later, the child came out from the bedroom, resumed crying incessantly and called out for "Mummy". The respondent tried to comfort the child by giving him a hug but was rebuffed. The child stamped his feet and continued calling for "Mummy". The respondent asked the child if he wanted milk or water, but the child did not respond and continued stamping his feet. The respondent went to the kitchen and handed a bottle of water to the child who pushed it away. Following this, the respondent also tried switching on the television and playing music from the child's "Barney CD" in an effort to placate him, but to no avail.

11 The respondent finally gave up and began preparing his breakfast of fried rice. Midway through his preparations, the respondent shouted at the child and told him to go play with his toys. The child went inside the bedroom and played with his toys while continuing to cry. At this time, the respondent had a stomach ache and he stopped cooking. After he came out of the toilet, the respondent sat in front of the television in an effort to "cool [himself] down". Within a few minutes, however, the respondent went inside the bedroom, grabbed the child, and shouted at him in Malay, asking him why he was so naughty. He then pointed the child towards a wall, which he previously ordered the child to stand in front of as a form of punishment for misbehaviour. The child cried even louder, and the respondent hit the child on his hand using his finger, at the same time shouting "Diam"

at him. The respondent then started slapping the child using his right hand, all the while shouting "Diam". When the child did not stop crying, the respondent threw four or five punches at the child's face and forehead and jabbed upwards at the child's chin, before grabbing the child by the mouth with his right hand and holding onto the child's shoulder with his left hand, lifting him off the ground and slamming him into the wall next to the bedroom doorframe. He did not stop after slamming the child, but carried on slapping the child on his back, at which point the child stopped crying. These actions formed the basis of the first charge.

12 After this series of events, the respondent pulled down the child's shorts inside the bedroom and opened the top of the child's diapers. He then grabbed the child's penis and shook it violently before squeezing it. He continued to pinch and pull the child's penis before lifting the child and biting him on his right thigh. He proceeded to bite the child's penis, scrotum, stomach and nose. The respondent admitted to biting the child's penis several times. The shaking, grabbing and biting of the child's genitalia formed the basis of the third charge.

13 After these assaults on the child, the respondent found the child pale and unresponsive. He looked for help and carried the child out to a neighbour's flat. The respondent said the child had stopped breathing at this time. An ambulance was called and the victim was sent to the Kandang Kerbau Women's and Children's Hospital. One of the paramedics who answered the call testified that the respondent had his right palm over the child's chest and was blowing air into the child's mouth.

14 At about 11.36am on the same day, Dr Janil Puthucheary attended to the child and found multiple injuries of various ages – on the face, head, trunk, limbs, abdomen, genitalia and the back. The child underwent emergency surgery. On 18 January 2008, the child died. The autopsy conducted on 19 January 2008 showed a total of 31 injuries, including injuries on the child's head, upper limbs, anterior trunk, back, pubic region and genitalia, and lower limbs. The primary cause of death was established to be from the head injuries suffered by the child, leading to bleeding over the surface of the brain, *ie*, intracranial haemorrhage.

15 After a trial lasting eight days, the DJ convicted the respondent of all three charges. The DJ agreed with the prosecution's submission that the overriding sentencing imperative in this case was of deterrence, both specifically to prevent the respondent from re-offending and in general to send a strong and clear message to the public against the mistreatment of young children. After considering the sentencing precedents cited by the prosecution for offences punishable under ss 325 and 326 of the Penal Code (see below at [20]), the DJ held that the present case of causing grievous hurt was of a more serious nature and sentenced the respondent to six years' imprisonment and 12 strokes of the cane for the first charge. However, no sentencing precedent was cited by the prosecution for the CYPA offences, and the DJ took into account precedents from *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at pp 122–124. He then sentenced the respondent to one year's imprisonment for each of the second and third charges. Finally, the DJ ordered that the sentences for the first and third charges were to run concurrently because he regarded the offences to be committed at the same time and therefore fell within the 'one transaction' rule.

16 The prosecution appealed on the ground that the aggregate sentence for the three offences was manifestly inadequate. The prosecution submitted that the maximum penalty should have been imposed for each of the charges, and that the sentences should run consecutively instead of concurrently.

The appropriateness of imposing the maximum penalty

The law

17 The principle for imposing the maximum prescribed punishment for any offence is clear. It is only warranted when the particular crime belongs to the most serious category of cases under that offence, although it need not be restricted to the 'worst case imaginable': see *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 at 542, [13] and *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 where the court stated at [84]:

> By imposing a sentence close to or fixed at the statutory maximum, a court calibrates the offender's conduct as among the worst conceivable for that offence. In other words, when Parliament sets a statutory maximum, it signals the gravity with which the public, through Parliament, views that particular offence: *Cheong Siat Fong v PP* [2005] SGHC 176 at [23]; *R v H* (1980) 3 A Crim R 53 at 65. Therefore, it stands to reason that sentencing judges must take note of the maximum penalty and then apply their minds to determine precisely where the offender's conduct falls within the spectrum of punishment devised by Parliament.

Therefore, even if the conduct in a particular case could have been exacerbated in some way, the maximum penalty is still appropriate where the conduct could be objectively characterized as belonging to the worst end of the scale when comparing instances of that offence.

18 Death, it goes without saying, is generally the most serious consequence of any offence and may warrant the imposition of a maximum sentence: see, for instance, *Public Prosecutor v Fazely bin Rahmat and another* [2003] 2 SLR(R) 184, where the (then) maximum sentence under s 325 of the Penal Code of seven years' imprisonment and 12 strokes of the cane was imposed for each of the two offenders convicted of causing grievous hurt to a victim for an assault (together with other gang members) on the victim which lead to his death. But the consequence of death alone would not attract the maximum sentence without more. Factors such as the manner in which the death was caused, the relationship between the offender and the victim, the offender's state of mind or the offender's motives would also go towards the weighing of whether this particular instance fell within the worst category of cases for the offence in question.

19 Separately, the gravity of the offence would be increased in cases involving vulnerable victims. Children and young persons are particularly vulnerable because they are unable to fend for themselves and require their parents or guardians to take care of them. Any person entrusted with the care of young children would be harshly dealt with if that trust is betrayed: see *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 at [30] and *Public Prosecutor v Teo Chee Seng* [2005] 3 SLR(R) 250 at [9].

The first charge – voluntarily causing grievous hurt

20 In relation to the first charge for voluntarily causing grievous hurt, the DJ considered several cases under s 325 of the Penal Code involving similar facts. First, the case of *Yap Seow Cheng v Public Prosecutor* [2002] SGDC 261 ("*Yap Seow Cheng*"), where the father of a three-month-old boy pleaded guilty to assaulting his son in a fit of anger when he could not stop crying. The offender slapped the victim repeatedly on both cheeks and also grabbed the victim's arms, resulting in the victim suffering from moderate to severe neuro-development delay. The offender was sentenced to three years' imprisonment and six strokes of the cane. Second, the case of *Cindy Chandra v Public Prosecutor* (MA 293/1996) (referred to in *Yap Seow Cheng*), where the mother of a four-year-old girl had pleaded guilty to throwing her daughter onto the concrete floor twice when she found that her daughter had been slow in eating her meal. As a result, the victim became mentally retarded and visually impaired. The offender was sentenced to four years' imprisonment. Third, the case of *Public Prosecutor v Rosnani bte Ismail* (DAC 19936/2000) ("*Rosnani*") (also cited by the court in *Yap Seow Cheng*), in which a mentally retarded mother hit her child with a metal rice pot causing the child's

death. The offender pleaded guilty and was sentenced to five years' imprisonment.

21 The victim here was a three-year-old child. The respondent had agreed to be the child's stepfather, *ie*, he had agreed to be the child's care-giver and guardian in the absence of the child's biological father. Indeed, at the time of the offence, the respondent was charged with taking care of the child in the mother's absence. But, instead of looking after the child, he lost his temper and *repeatedly* slapped and punched the child in the face before slamming the child's head into the wall. It was this head injury which led to the intracranial haemorrhage causing the child's death. Unlike the first two cases discussed above where the young victims survived the assaults, the respondent in this case had caused the death of the child when he should have been caring for his welfare. He had not intended to cause death, but he had intended to cause physical harm to the child.

22 Mr Derek Kang Yu Hsien, counsel for the respondent, argued that the present facts were not so different from the case of *Rosnani* where the victim had also died and therefore did not warrant the imposition of the maximum sentence. I could not agree. Although the victim in *Rosnani* was of a similar age and had also died as a result of the assault, the offender in *Rosnani* was mentally retarded, and, furthermore, she had pleaded guilty upon being charged with the offence. In stark contrast, there were no such mitigating factors present here. There was no evidence that the respondent was in any way mentally retarded. He had claimed trial to the three charges for which he could not possibly have any defence without proving diminished responsibility or insanity. His conduct was some evidence of a lack of remorse for what he had done. The nature of the injuries caused to the child and the circumstances in which they were inflicted put this case, in my opinion, in the worst category of cases of causing grievous hurt.

The second and third charges – the CYPA offences

23 Turning to the offences under the CYPA, the DJ considered the following precedents. First, in *Subagio Soeharto v Public Prosecutor* (MA 505/1993), five charges were preferred against the offender, who was the father of both victims. The first victim was less than two years old and was assaulted by the offender on four separate occasions over a period of five months. The second victim was two and a half years old and was assaulted once. Both victims suffered bruises on their thighs, trunks and cheeks. The offender claimed trial and was convicted on all charges. He was sentenced to six months' imprisonment for each of the charges, which were ordered to run consecutively for a total of 30 months' imprisonment. Second, in *Public Prosecutor v Tan Meow Eng* (DAC 25526/1997) ("*Tan Meow Eng*"), the offender was the mother of the one year and nine months old victim. When the family went on a six-day holiday, the offender continually beat the victim on his legs whenever he cried, refused to sleep, or was naughty. She also allowed her boyfriend to administer sleeping pills to the victim and failed to provide him with enough food. The offender pleaded guilty to one charge of ill-treatment under the CYPA and was sentenced to 15 months' imprisonment. Third, in *Mohd Iskandar bin Abdullah v Public Prosecutor* (MA 187/1998) ("*Mohd Iskandar bin Abdullah*"), the offender was the father of both victims. He punched the first victim on his cheeks, and beat the second victim with his belt buckle until the belt buckle broke off. He also kicked the second victim in the head causing him to lose consciousness temporarily. The offender pleaded guilty to two charges, and three other charges were taken into consideration. He was sentenced to 18 months' imprisonment for each charge.

24 In the present case, I agreed with Mr Kang that the sentence imposed for the second charge, namely, the respondent's punching of the child on 12 January 2008, was not manifestly inadequate. The offence constituted a one-off instance of abuse as compared to the series of acts comprising the ill-treatment seen in *Tan Meow Eng* and *Mohd Iskandar bin Abdullah* above. Additionally, the injury suffered was not so serious that it could be characterized as belonging to the worst category of offences under s 5(1) of the CYPA.

25 However, the same could not be said of the third charge, *ie*, the respondent's shaking, grabbing and biting of the child's private parts. While the offence was not carried out over a prolonged period of time and might have been the result of the respondent's lack of self-control, the fact remained that the respondent engaged in an especially perverse form of child abuse when he did what he did. This particular offence exhibited an extreme degree of perverted violence. A child's genital area is vastly more vulnerable than say, his arms or his buttocks, and the pain inflicted by his depraved biting of the child's genitalia would likely be more severe than if another part of the child's body was bitten. This continued assault on the child's private parts could not readily be compared to more common forms of violence against children such as caning or beating on the arms, legs, or body. It revealed a senseless brutality which must be punished by a corresponding severity. Thus, it was my view that the third charge should properly be characterized as one of the worst cases of its kind. I therefore increased the sentence imposed for this charge from one year's imprisonment to four years' imprisonment instead.

The 'one transaction' rule

26 On appeal, the prosecution did not challenge that the 'one transaction' rule was applicable. Instead, the prosecution argued that the rule was not a rigid one and should be ignored in this case due to the gravity of the offences. On the other hand, Mr Kang argued that the offence committed with respect to the third charge was not sufficiently serious to justify a departure from the general principles governing offences in the same transaction.

27 The 'one transaction' rule, together with the totality principle, provides a useful guide for the court to assess whether concurrent or consecutive sentences should be imposed when an offender has done a criminal act or acts which have resulted in a plurality of offences. A related principle that should be borne in mind is where an offender is convicted of various offences arising from what is essentially one incident, his overall sentence should reflect his role and culpability in the incident as a whole*. The rationale underpinning these principles is that of proportionality in punishment*: see *Jeffery bin Abdullah v Public Prosecutor* [2009] 3 SLR(R) 414 at [16] and *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [60].

28 Put simply, the essence of the 'one transaction' rule is that where two or more offences are committed in the course of a single transaction, all sentences in respect of these offences should be concurrent rather than consecutive (the rule is, however, subject to the qualification in s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) in Singapore). The English Court of Appeal observed in *Peter John Kastercum v R* (1972) 56 Cr App R 298 at 299–300 that:

> [W]here several offences are tried together and arise out of the same transaction, it is a good working rule that the sentences imposed for those offences should be made concurrent. *The reason for that is because if a man is charged with several serious offences arising out of the same situation and consecutive sentences are imposed, the total very often proves to be much too great for the incident in question. That is only an ordinary working rule*; it is perfectly open to a trial judge in a case such as the present to approach this in one of two ways. If he thinks that the assault on the police officer is really part and parcel of the original offence and is to be treated as an aggravation of the original offence, he can reflect it in the sentence for the original offence. If he does that, it is logical and right that any separate sentence for the assault should be made concurrent. On the other hand, and, as this Court thinks, a better course, in cases where an offender assaults the police in an effort to escape, the sentence for the principal offence can be fixed independently of the assault on the constable, and the assault on the constable can be dealt with by a separate and consecutive sentence. [emphasis added]

This approach was approved by the Court of Appeal in *V Murugesan v Public Prosecutor* [2006] 1 SLR(R) 388 ("*Murugesan*") at [34]. In *Law Aik Meng*, the court also endorsed Prof Andrew Ashworth's remarks in *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) at p 244 that the 'one transaction' rule "seems to be little more than a pragmatic device for limiting overall sentences rather than a reflection of a sharp category distinction", which consequently hindered the definition of what constituted a single transaction (at [56]). In that sense, the rule is really just another way of formulating the totality principle.

29 A competing concern is that offenders, in the knowledge that they would not face consecutive sentences, would have no reason to stop and avoid committing a further similar offence that could be classified as part of the same transaction. However, because the rule is not a rigid one, the court may in appropriate circumstances impose consecutive sentences despite the offences forming one transaction: see *Murugesan* at [33]–[35] and *Kanagasuntharam v Public Prosecutor* [1991] 2 SLR(R) 874, in which the Court of Appeal stated that (at [6]):

> The general rule, however, is not an absolute rule. The English courts have recognized that there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished: see *R v Faulkner … , R v Wheatley…* and *R v Skinner…* . The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence. It is stated in broad and general terms and although it may be criticized as vague, it is necessarily in such terms in order that the sentencer may impose an appropriate sentence in each particular case upon each particular offender at the particular time the case is heard.

30 As was acknowledged in *Law Aik Meng*, the difficulty arises in defining what exactly constitutes a single transaction. The court there took the general approach of considering proximity in time and proximity in type of offence to determine if the offences formed a single transaction (citing with approval Prof Ashworth in *Sentencing and Criminal Justice* at p 245 and also Dr D A Thomas in *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 54). Earlier, the Court of Appeal in *Tse Po Chung Nathan and another v Public Prosecutor* [1993] 1 SLR(R) 308 at [31] had also accepted that factors such as proximity of time, unity of place, unity of purpose or design and continuity of action would determine if offences formed part of the same transaction. The court cited with approval *B B Mitra on the Code of Criminal Procedure, 1973* (Kama Law House, 16th Ed, 1987) at p 1385 that "[i]t is not the distance nor the proximity of time which is so essential in order to consider what is "the same transaction" as the continuity of action and purpose".

31 Recent case law illustrates the uncertain boundaries of the 'one transaction' principle. In *Murugesan*, the offender had, *inter alia*, abducted and raped the victim. The Court of Appeal held that "[t]he abduction was for the purposes of having illicit intercourse with the victim and it was really part and parcel of the rape" (at [35]). The court also cited the English Court of Criminal Appeal case of *R v Torr* [1966] 1 All ER 178 at 180:

> [A]s both charges arise out of precisely the same facts and involve, so to speak, exactly the same criminality on the part of the appellant, there was no possible reason for passing consecutive sentences.

Accordingly, the sentences for the rape charge and the abduction charge were ordered to run concurrently.

32 Similarly, in *Mohamad Iskandar bin Basri v Public Prosecutor* [2006] 4 SLR(R) 440 ("*Mohamad Iskandar bin Basri*"), a fire fighter driving a fire fighting vehicle to the site of a fire failed to stop at a

cross junction while the traffic lights were red against him and collided with a taxi, resulting in the death of one of the three passengers in the taxi. He pleaded guilty to three charges: (a) doing a rash act not amounting to culpable homicide by failing to conform to the traffic signal; (b) causing grievous hurt by acting so rashly as to endanger human life; and (c) causing hurt by acting so rashly as to endanger the personal safety of others. The court found that the 'one transaction' rule applied because the injuries caused "all stemmed from one act of rashness and not a series of such acts" (at [29]).

33 On the other hand, in *Law Aik Meng*, the court found that the 'one transaction' rule did not apply. In that case, the offender, with his accomplices, had committed theft of cash against a single victim, the Development Bank of Singapore Limited, by stealing from three different automated teller machines across Singapore over a period of five weeks. However, because there was no proximity of time between the various instances of theft, the court ruled that the offences did not form part of the same transaction, although in any case the gravity of the offences involved justified a departure from the rule (at [56]).

34 Likewise, in *Public Prosecutor v Lee Cheow Loong Charles* [2008] 4 SLR(R) 961, I held that the mere fact that an accused committed several distinct offences in a short span of time did not mean the 'one transaction' rule applied. In that case, the accused had been disqualified from driving. However, in blatant disregard of the ban, the accused drove, in excess of the speed limit, and hit an elderly pedestrian at a signalised crossing. He then drove off without rendering any assistance to her. The accused pleaded guilty to essentially three groups of offences, namely, causing death by a rash act, driving while disqualified, and failing to render assistance after a fatal accident. There, I found that the district judge at trial had implicitly considered the offences to arise from the same transaction, which contributed to the inadequacy of the sentences imposed. On appeal, I held that each of those groups of offences were distinct and separate, both factually and conceptually, from the other groups of offences, because each group was in itself serious, and more importantly did not necessarily or inevitably flow from the other groups of offences (at [24]). There was present an element of control with respect to some of the offences which were committed serially and were committed separately from the others. Thus, there was no basis for the application of the 'one transaction' rule in such a situation (although the rule would, separately, be applicable to the charge of failing to render assistance and another charge of failing to stop a vehicle after a road traffic accident, which charge was taken into consideration).

35 The facts of the present appeal do not lend themselves to easy classification. Unlike the situation in *Law Aik Meng*, there was clearly proximity of time between the conduct forming the first and third charges against the same victim. Indeed, that was the basis of the DJ's decision to apply the 'one transaction' rule. Nonetheless, proximity of time alone would not tie two otherwise distinct offences into one transaction, although I noted that the offences were, in a sense, similar in nature. They were not, however, exactly the same type of behaviour in nature. The series of blows forming the first charge led to the head injuries which endangered the child's life, eventually leading to his death by intracranial haemorrhage. On the other hand, the second set of blows to the child's genitalia were separated in time (albeit briefly) as they were perpetrated *after* the first set of blows, and did not endanger the child's life although it caused the child extreme pain and trauma.

36 Since the injuries to the child's genitalia did not cause the child's death, the respondent's shaking, grabbing and biting of the child's genitalia could be said to be distinct and severable from the first charge. But this offence need not have been committed at all if he did not want to commit it This was not a situation where the *same set of blows* formed the facts behind a charge of causing grievous hurt and a charge of ill-treatment of a child; as contrasted with the situation in *Mohamad Iskandar bin Basri* where a single rash act formed the basis for three separate offences. Despite the

similarity between the first and third charges, they arose from different facts. A further distinction may be drawn with the situation where an offender abducts a victim and then rapes her, such as in *Murugesan*. There, the abduction was for the purpose of illicit intercourse, and was appropriately characterized by the court as part and parcel of the second offence. Here, the first charge would not seem to be part and parcel of the third charge. The child had stopped crying after being slammed against the wall. The original impetus prompting the respondent's outrageous outburst was removed, and there was no fresh grievance which could have sparked off the respondent's rage after the child had stopped crying. At this point, the respondent failed to stop his attack but instead made the decision to remove the child's shorts and abuse his genitalia. He need not have committed the third offence if he did not want to commit it. The two criminal acts were separate and distinct.

37 Hence, at the moment the respondent failed to stop, his subsequent actions should not be viewed as part of the same set of facts. Characterizing the respondent's actions as one transaction would also mean a similar offender in the same position would have no incentive to stop an attack on the child, even after endangering the child's life, because such further attack would not attract a further imprisonment term.

38 For these reasons, I was not convinced that the respondent's actions in the first and third charges were part of the same transaction. The boundaries of what constitutes one transaction are admittedly difficult to pin down and, as is commonly observed, much would depend on the circumstances surrounding the commission of the offences. Ultimately, any analysis must take a commonsensical view as to what forms part of a single transaction. In any case, however, the rule is not absolute. Here, the injuries inflicted by the respondent were numerous, grave and perverse (as the autopsy report shows, 31 injuries were found throughout the child's body). The respondent's punch inflicted on 12 January 2008 was not even the first time the respondent had raised his hand against the child, but part of a pattern of abuse. The respondent, who was the victim's *de facto* guardian, had used excessive force over a period of time and in a vicious manner on a vulnerable victim who was unable to retaliate or defend himself. His repugnant conduct tragically resulted in the death of an innocent child. This was without doubt one of the worst cases of child abuse in Singapore. Thus, even if the offences may have appeared to be part of the same transaction, I was of the view that the facts of this case called for the imposition of consecutive, rather than concurrent, sentences.

Conclusion

39 In the circumstances, I allowed the appeal in part and substituted the sentences imposed by the DJ as follows:

(a) DAC 40614/2008 – seven years' imprisonment and 12 strokes of the cane;

(b) DAC 40615/2008 – one year's imprisonment; and

(c) DAC 40616/2008 – four years' imprisonment.

I ordered all three sentences to run consecutively, with the aggregate sentence of 12 years' imprisonment and 12 strokes of the cane to run from the date of remand on 16 January 2008.