IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 272

Criminal Case No 45 of 2018

Between

Public Prosecutor

And

Lim Chai Heng

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Mentally disordered offenders]

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Public Prosecutor
v
Lim Chai Heng

[2019] SGHC 272

High Court — Criminal Case No 45 of 2018
Vincent Hoong JC
14 October 2019

25 November 2019 Judgment reserved.

Vincent Hoong JC:

Introduction

1 It is often said that criminal sentencing is a highly fact-sensitive exercise, and that judges ought to exercise their sound discretion in determining the appropriate sentence which achieves fairness in the circumstances of the case. How do such principles apply when a court is faced with the task of sentencing an accused person who was ailing under a previously undiagnosed mental condition, which significantly affected his ability to appreciate the serious harm that his rash act would cause? Where do the scales of justice lie in such a case?

2 In this judgment, I set out my reasons for sentencing the accused person to an imprisonment term of one year for having driven against the flow of traffic while afflicted by acute psychosis, which caused the tragic death of an innocent

road-user and serious injury to four others.

Facts

3 The facts of this case are perplexing and troubling.

The accused person far exceeded his intended destination, driving into the motorcycle lane of Tuas Checkpoint

4 The accused person is 56 years old and the sole proprietor of a small business in the colour printing industry. On a fateful Monday in December 2016 at about 7.25am, the accused person and his son left their residence at Hougang and boarded the accused person's car. It was his son's first day of work, and the accused person intended to send him to his workplace at the Central Manpower Base, Depot Road.[1]

5 The accused person drove along the Central Expressway ("CTE") towards the Ayer Rajah Expressway ("AYE"). After he had passed Exit 10 (Braddell Road), his son asked him why he did not exit the CTE, as he could avoid having to incur the Electronic Road Pricing ("ERP") charges. He replied, "[d]o not be afraid, I know the way." He thus continued driving on the CTE at a speed of approximately 80 to 90 km/h, and abided by the road traffic rules.[2]

6 Having failed to exit at the Braddell Road exit, he was then supposed to exit the CTE at Exit 1A (Jalan Bukit Merah), being the exit closest to his intended destination at Depot Road. However, he did not do so. Instead, he continued onto the AYE, where he started to increase his driving speed to

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1 Statement of Facts ("SOF") para 4.

2 SOF para 5.

approximately 100 km/h, making lane changes in the process so as to maintain his speed amidst moderate traffic. He deliberately slowed his car as he approached and passed a fixed speed camera located somewhere after Exit 8 (North Buona Vista Road) of the AYE.[3]

7 At various points along the way, his son asked him to exit the AYE, but he refused, alleging that his son did not trust him. He did not take the subsequent 14 exits on the AYE, and reached the end of the AYE at Tuas Checkpoint after travelling approximately 23km on the AYE.[4] By this point, he had far exceeded his intended destination.

8 Upon arriving at Tuas Checkpoint, at about 7.57am, he drove into the motorcycle lane, despite knowing that it was against road traffic rules. He continued until the lane became too narrow for his car to pass through.[5] It was at this point that the accused person stopped the car, carefully made a three-point turn, and began driving back against the flow of traffic on the motorcycle lane.

The accused person drove against the flow of traffic

9 The accused person knew that driving against the flow of traffic was a road traffic offence, and was subjectively advertent to the risk that his act of driving against the flow of traffic would endanger human life or the personal safety of others. Despite that, he continued driving at a speed of 37 to 41 km/h,

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3 SOF para 5.

4 SOF para 6.

5 SOF para 7.

while oncoming motorcycles had to stop upon seeing his car approaching them.[6] Up to this point, fortunately, no one was injured.

10 He eventually reached the barrier gap, which separated the car lane from the motorcycle lane. He then merged back into the car lane, and continued driving against the flow of traffic on the Tuas Checkpoint Departure Viaduct ("Viaduct"), leading to the AYE. At this point, his car was on lane 2 of the two-lane Viaduct, and two oncoming vehicles had to filter to lane 1 to avoid him. While on the Viaduct, he depressed his brakes once in response to oncoming traffic, and continued driving against the flow of traffic on lane 2. Just prior to exiting the Viaduct, his car had accelerated to a speed of approximately 85 km/h.[7] No one was injured at this point.

The collisions

11 The accused person then exited the Viaduct and entered the AYE. Still driving against the flow of traffic, he accelerated to a speed of 126 to 147 km/h. By this time, the accused person was on lane 1, the fastest lane on the expressway.[8]

12 At about 8.01am, the accused person approached the vehicle driven by one Tan Han Boon ("V1"). The vehicle in front of V1 swerved left to avoid the accused person's car. Upon seeing the accused person's car, V1 also swerved left towards lane 2 to avoid a collision, but collided instead with a bus that was

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6 SOF paras 7 to 8.

7 SOF para 9.

8 SOF para 10.

already in lane 2. V1's car spun across the front of the bus, and hit the concrete wall next to lane 3 of the AYE.[9]

13 The deceased person was driving on lane 1 of the AYE directly behind V1's car. The deceased person's wife, V2, was in the front passenger seat of his car. After narrowly avoiding V1's car, the accused person's car collided head on with the deceased person's car at a speed of between 137 to 139 km/h. As a result of the impact, the deceased person's car veered from lane 1 to lane 3, tilted to a vertical position, and then slammed against the concrete wall.[10]

14 The impact also caused the accused person's car to veer from lane 1 to lane 3, and collide head on with the motor scooter ridden by one Teh Tze Yong ("V3"). The force of the impact flung V3 and his wife, Choo Yat Chiam ("V4"), who was riding pillion at the time, from the scooter. The accused person's car continued veering until it collided with the concrete wall, when it finally came to a halt.[11]

15 The accused person had travelled against the flow of traffic from the Tuas Checkpoint to the point of the collisions for a total distance of approximately 1.8km. At the time of the accident, the traffic was moderate, visibility was good, and the road surface was dry.[12]

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9 SOF para 11.

10 SOF para 12.

11 SOF para 13.

12 SOF para 13.

Injuries caused

16 The deceased person was pronounced dead at the scene. The cause of death was multiple injuries that he had sustained in the collision.[13]

17 The other victims, V1 to V4, suffered the following injuries:

(a) V1 (the driver of the first car who had narrowly avoided the accused person's car) suffered bilateral forearm superficial linear abrasions, as well as a 4x3cm oval abrasion on the volar aspect of the left forearm. He was discharged with three days' medical leave;[14]

(b) V2 (the deceased person's wife) suffered swelling over her face, bruising over her right wrist, left knee and abdomen. She also suffered bilateral mandibular (jawbone) fractures, a right second rib fracture with a right lung contusion (bruising of the lung) and inflammation on her right-sided large intestine. She underwent surgery for her jawbone fractures. Four days after the accident, she was having flashbacks and stress reactions to the accident. She was discharged and given one month of medical leave;[15]

(c) V3 (the rider of the motor scooter) suffered multiple fractures, namely, a left elbow Gustillo 3A open fracture, a closed left and right distal radius fracture, and an open comminuted right middle finger middle phalanx fracture. V3 also underwent a right ring finger middle

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13 SOF para 14 and Annex B, p 7.

14 SOF para 16(d) and Annex G.

15 SOF para 16(a) and Annex D.

phalanx amputation and suffered an upper lip laceration. He underwent surgeries twice, and was discharged about ten days later;[16] and

(d) V4 (the pillion of the motor scooter) suffered a left closed proximal femur shaft fracture, a left open patella fracture and a left acromioclavicular joint sprain. She underwent surgery and was discharged about a week later.[17]

Property damage

18 The accused person's actions also caused property damage:[18]

(a) Cost of repairing the bus that collided with V1's car: S$27,737.82;

(b) V1's car was scrapped as it was beyond repair. Its market value: S$110,000;

(c) The deceased person's car was not subjected to professional inspection and it was scrapped;

(d) V3's scooter was scrapped as it was beyond repair. Its market value: RM9,900 (approximately S$3,268); and

(e) Cost of repair of wall cladding on the AYE: S$1,304.06.

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16 SOF para 16(b) and Annex E.

17 SOF para 16(c) and Annex F.

18 SOF paras 22 to 23.

Charges

19 For driving against the flow of traffic and causing a fatal accident, the accused person was charged under s 304A(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") for doing a rash act not amounting to culpable homicide. The Prosecution proceeded with this sole charge ("the offence").

20 Four other charges relating to the hurt or grievous hurt caused by the accused person's rash act which endangered the life or the personal safety of V1 to V4 (under ss 337(*a*) and 338(*a*) of the PC) were taken into consideration for the purposes of sentencing.[19]

The reports

Vehicle mechanical report

21 There was no mechanical defect on the accused person's car that could have led to or contributed to the accident.[20]

IMH reports

22 The accused person was examined by Dr Jerome Goh Hern Yee ("Dr Goh"), a Senior Consultant and Chief of the Department of General and Forensic Psychiatry at the Institute of Mental Health ("IMH") on four different occasions in January 2017. Dr Goh also interviewed the accused person's wife and children, as well as his former employee, Mdm Teo.[21]

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19 Schedule of Charges.

20 SOF para 17 and Annex H.

21 SOF para 18 and Annex I, p 1.

First IMH report

23 Pursuant to his assessment, Dr Goh prepared three psychiatric reports on the accused person's mental condition at the time of the offence. In his first report, Dr Goh observed that the accused person had no prior contact with a psychiatrist prior to the offence. He also denied having marital problems, but reported recent conflict with his wife over his business, which was not doing well.[22]

24 As the accused person's business had been faring poorly for years, he had borrowed money from his family members and banks, and was considering various options to divest himself of the business. He reported that he had a very capable female employee, namely Mdm Teo, who had worked with him for more than 20 years but who had resigned recently, thus adding to his stress.[23]

25 On the day before the offence, he reported feeling his willpower being "controlled by [G]od", and that he had been hearing voices which prompted him to recognise Mdm Teo as his "god-sister".[24]

26 On the day of the offence, the accused person had chosen to drive on the CTE route because he felt it would be faster, even though he would have to incur ERP charges. However, he said that he felt that he was "not allowed" to turn off at the Bukit Merah exit, which was the closest exit to his son's workplace. He had told his son that "[G]od today won't let you go to work".

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22 SOF Annex I, paras 4 and 5.

23 SOF Annex I, paras 8, 9 and 17.

24 SOF Annex I, para 13.

When his son asked where they were going after he had missed the Bukit Merah exit, he replied that he did not know where "[G]od" wanted to bring them to.[25]

27 He reported how he had applied the brakes in response to traffic and steered the car within lane. He and his son then arrived at the point in Tuas Checkpoint where his car could not proceed any further. He thus did a U-Turn, before driving against the flow of traffic. He said that he was alarmed when he saw vehicles approaching his car, and thought that he would collide with them.[26] After the collisions, he could not open his car door, and asked his son to call his wife.[27]

28 The accused person's erratic behaviour preceding the collisions was largely corroborated by his family members, who reported that his behaviour and conversations in the days preceding the offence were "strange".[28] His son said that he had tried to stop his father while in the car, but had no idea how to do so despite trying his best.[29]

29 Given the above, Dr Goh opined that the accused person had "acute psychosis around the time of the alleged offence", which had been treated and had since resolved with the help of ongoing antipsychotic medication. Dr Goh was of the view that the accused person was "not of unsound mind … in that he was aware of the nature and quality of his actions, i.e. driving against the traffic". However, the accused person's judgment was "*significantly impaired*

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25 SOF Annex I, para 14.

26 SOF Annex I, para 15.

27 SOF Annex I, para 15.

28 SOF Annex I, paras 18 and 19.

29 SOF Annex I, para 20.

by his acute psychotic symptoms that lead (*sic*) to him discounting the risks associated with his actions, despite signs of danger he observed and warnings from his son then" [emphasis added].[30]

Second IMH report

30 In response to the lead detective's further queries based on his first IMH report, Dr Goh explained in his second report that his opinion remained that the accused person had acute psychosis around the time of the alleged offence, although he was of the view that the underlying cause of his acute psychosis remained unclear. Dr Goh further observed that the accused person's acute psychosis "appeared to have settled by the time he was hospitalised …, after he was started on anti-psychotic medication".[31]

31 As for efforts to be taken to prevent recurrences of the accused person's acute psychosis, Dr Goh opined that the accused person "should continue to see a psychiatrist for follow-up to monitor for any recurrence of psychotic symptom(s), and should continue with psychiatric treatment for now". He did not anticipate any risk factor(s) that pointed towards the need for a significant period of rehabilitation, although any downward adjustment to his medical dosage ought to be done in consultation with his psychiatrist, while under close monitoring for any symptom recurrence.[32] Dr Goh also stated that the accused person was compliant with his psychiatric treatment, and had consulted a psychiatrist in private practice.[33]

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30 SOF Annex I, para 21.

31 SOF Annex J, p 1.

32 SOF Annex J, p 2 at paras (d) and (f).

33 SOF Annex J, p 2 at para (e).

32 Finally, he noted that 0.15mcg/ml of tramadol was detected in the accused person's blood. However, it was "very unlikely" that this would have affected his mental state as tramadol "is a centrally acting analgesic that is used to relieve pain". The accused person was not tested positive for drugs that are associated with psychotic symptoms, such as amphetamines and methamphetamines.[34]

Third IMH report

33 A third IMH report was requested from Dr Goh. In this report, Dr Goh clarified that when he stated that the accused person was "alarmed as he thought he would collide with the vehicles", he was paraphrasing the accused person's words in the interview:[35]

> His exact words in my interview with him are in *italics* below:
>
> when he "*saw cars and motorcycles come towards him*", "*I knew finished already*" and "*I thought then … surely accident already"* and "*if not others hit me, I would hit others*".

34 Apart from Dr Goh's reports, which were annexed to the Statement of Facts to which the accused person pleaded guilty without qualification, no other psychiatric reports were tendered. It was thus undisputed by both sides that, at the time of the offence, the accused person had acute psychosis which significantly impaired his judgment, although he was not of unsound mind as he was aware of the nature and quality of his actions, including his act of driving against the flow of traffic.[36]

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34 SOF Annex J, p 2 at para (g).

35 SOF Annex K, para 3.

36 SOF para 19.

Procedural history

35 At the hearing before me, the accused person pleaded guilty to the offence without qualification. I convicted him accordingly. He also consented to the remaining charges with respect to V1 to V4 being taken into consideration for the purposes of sentencing.

36 After hearing submissions from the Prosecution and counsel for the accused person ("the Defence") on the appropriate sentence, I reserved my judgment on sentencing.

Submissions on sentencing

37 Before determining the appropriate sentence, I set out briefly the parties' respective submissions on sentencing.

The Prosecution's submissions

38 In its address on sentence, the Prosecution seeks a sentence of at least two years' imprisonment.[37] In oral submissions before me, the Prosecution additionally sought an order that the accused person be disqualified from driving for at least 12 years.

39 The Prosecution's submission of two years' imprisonment was arrived at by applying the two-stage sentencing framework for s 304A(*a*) of the PC in *Public Prosecutor v Ganesan Sivasankar* [2017] 5 SLR 681 ("*Ganesan*"). Under this framework, the case must first be categorised into one of three categories depending on the accused person's *culpability* and, in exceptionally

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[37] Prosecution's Address on Sentence ("PAS") paras 2 and 23.

severe cases, the *harm* caused by the offence. The three categories carry the following applicable presumptive sentencing ranges (*Ganesan* at [65(a)]):

Category	**Accused person's culpability (and harm caused in exceptional cases)**	**Culpability-increasing factors**	**Presumptive sentencing range**
1	Low	Either absent altogether or present to a very limited extent	3 to 5 months' imprisonment
2	Moderate	Cases usually involving culpability increasing factors	6 to 12 months' imprisonment
3	High	Intended to cover the most culpable of accused persons, such as if there is more than one of the more serious culpability-increasing factors or where the accused person's conduct is deliberately rash or exhibits a blatant disregard for human life.	More than 12 months' imprisonment

40 Applying the first stage of the *Ganesan* framework, the Prosecution submits that but for the accused person's acute psychosis, the present case ought to be situated close to the top of Category 3, with a starting point of at least 4.5

years' imprisonment.[38] The factors that established the accused person's extremely high degree of culpability include:

(a) The accused person had displayed an extremely high degree of rashness amounting to a blatant disregard for human life, by driving against the flow of traffic at a high speed on the fastest lane of the expressway. The duration of the offending conduct was prolonged as he had driven against the flow of traffic for approximately two minutes and covered a distance of close to 2 km.[39]

(b) Furthermore, the accused person caused greater harm than is ordinarily expected under s 304A(*a*) of the PC. Apart from the death of the deceased person, three victims suffered grievous hurt in the form of multiple fractures, while a fourth victim suffered hurt in the form of multiple abrasions. There was also significant property damage and many near-misses with at least three other vehicles.[40]

(c) The accused person had also breached multiple road traffic regulations, including driving on the motorcycle lane at Tuas Checkpoint, driving against the flow of traffic, and accelerating to a speed of 120 to 140 km/h which was far above the speed limit of 90 km/h.[41]

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38 PAS para 5.

39 PAS para 7.

40 PAS para 10.

41 PAS, para 11.

41 Nonetheless, the Prosecution submits that the starting point of at least 4.5 years' imprisonment can be calibrated downwards to at least 2.5 years' imprisonment to take into account the accused person's acute psychosis, which "has a bearing on his culpability".[42]

42 The second stage of the *Ganesan* framework then entails further adjustments to the starting point by taking into account the offender-specific mitigating and aggravating factors (*Ganesan* at [65(b)]). At this stage, the Prosecution submits that some mitigating weight ought to be given to the plea of guilt, although less or minimal weight ought to be given because the evidence against him, including closed-circuit television and in-car cameras that captured his reckless actions and the collisions, was overwhelming.[43]

43 In totality, the Prosecution therefore submits that a sentence of at least two years' imprisonment is appropriate.

The Defence's submission

44 The Defence also applies the *Ganesan* framework, but submits that the appropriate sentence reached is five to seven months' imprisonment.

45 Applying the first stage of the *Ganesan* framework, the Defence points out that there is no consideration of mitigating or *culpability-decreasing* factors at this stage.[44] This is because the *Ganesan* framework simply does not envisage a situation where the offender in a fatal accident case under s 304A(*a*) of the PC

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42 PAS, paras 13 to 14.

43 PAS, para 21.

44 Plea in Mitigation ("Mitigation") para 106(b).

also suffers from a mental condition that has a causal link to the rash act which caused the fatal accident.[45]

46 Nonetheless, the Defence submits that exceptional mitigating factors that directly relate to the commission of the offence ought to be considered at the first stage of the *Ganesan* framework, in determining under which of the three categories the accused person's culpability falls.[46] Considering the accused person's acute psychosis, the Defence submits that every culpability-increasing factor cited by the Prosecution is mitigated such that, at the highest, his culpability falls under the lower end of Category 2 of the *Ganesan* framework.[47]

47 As for the harm caused by the offence, the Defence points out that in *Ganesan*, the offender's rash act had resulted in the death of a pregnant victim. Even though the exceptional harm caused in *Ganesan* was a culpability-increasing factor, the court still held that this was insufficient to bring the case from Category 1 to Category 2 (*Ganesan* at [67]). The Defence submits that similarly, the harm caused here is not exceptional. The collisions resulted in a single death, with four other victims suffering varying degrees of injuries. As for the property damage caused, the victims would not have to bear the cost of repairs and thus suffered no financial loss. The accused person fully intended to render full compensation for the damage to the AYE wall cladding. Therefore, by analogy with *Ganesan*, the case ought not to be one where the harm caused by the offence pushes the accused person's culpability beyond Category 2.[48]

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45 Mitigation para 107.

46 Mitigation para 109.

47 Mitigation para 110.

48 Mitigation paras 117, 118, 123 and 124.

48 The Defence submits that, in moving to the second stage of the *Ganesan* framework, a downward calibration of the presumptive sentencing range is warranted given the accused person's plea of guilty. It evidences his genuine remorse while significant time and costs have been saved by avoiding a trial. He had also fully cooperated with the authorities during investigations, and was a first-time offender.[49]

49 In all, the Defence submits that an imprisonment term of five to seven months is appropriate.[50]

The applicability of the *Ganesan* framework

50 As seen from the above, both parties appear content with applying the *Ganesan* framework, although their means of application differ. In summary, the Prosecution has argued for an approach where the court first considers the accused person's culpability detached from the reality of his mental condition. On the other hand, the Defence submits that his mental condition was intricately interwoven with his culpability, such that it has to be considered in tandem with the culpability-increasing factors.

51 In my judgment, the *Ganesan* framework is the inappropriate starting point when dealing with an offender operating under a mental condition who causes a fatal accident by a rash act. Indeed, in *Ganesan* at [57], See Kee Oon J made clear that the presumptive sentencing ranges are "*merely starting points which seek to guide the exercise of sentencing discretion. They are not rigid and immutable anchors*" [emphasis added]. See J clearly envisaged that exceptional

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49 Mitigation para 125.

50 Mitigation para 126.

cases, such as the present, would require a consideration of other factors that were not raised previously. Hence, in the same paragraph, it was observed that "[t]he highly fact-specific nature of traffic offences (including fatal accident cases under s 304A(*a*) of the PC) means that sentencing, being ultimately a matter of discretion, must be approached judiciously with the highest level of attention to the facts and circumstances of each case".

52 Instead, the starting inquiry in sentencing an offender with a mental disorder ought to be whether the deterrent, retributive and protective principles of sentencing prevail over the principle of rehabilitation. In the Court of Appeal's decision in *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 ("*Kong Peng Yee*"), the court recognised that the following principles are relevant in sentencing an offender with a mental disorder falling short of unsoundness of mind (*Kong Peng Yee* at [59], citing *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [24] with approval):

(a) The existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process.

(b) The manner and extent of its relevance depend on the circumstances of each case, in particular, the nature and severity of the mental disorder.

(c) The element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one.

(d) In spite of the existence of a mental disorder on the part of the accused person, specific deterrence may remain relevant in instances

where the offence is premeditated or where there is a conscious choice to commit the offence.

(e) If the serious psychiatric condition or mental disorder renders deterrence less effective, where for instance the offender has a significantly impaired ability to appreciate the nature and quality of his actions, then rehabilitation may take precedence.

(f) Even though rehabilitation may be a relevant consideration, it does not necessarily dictate a light sentence. The accused person could also be rehabilitated in prison.

(g) Finally, in cases involving particularly heinous or serious offences, even when the accused person is labouring under a serious mental disorder, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation.

53 The four sentencing principles have been recognised as underlying the exercise of sentencing: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [17] and *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*") at [73].

54 I will therefore consider the applicability of each of the respective sentencing principles. The appropriate balance to be struck between these sentencing considerations will then be helpful in determining the sentence in this case.

55 This approach, in my judgment, is preferable to applying the *Ganesan* framework, and calibrating a sentencing discount (as the Prosecution submits)

or applying a broad-based but unascertained measure of discount to each culpability-increasing factor (as the Defence submits). There are three intertwined reasons for this:

(a) First, the *Ganesan* framework does not appear to envisage a situation of an offender who causes a victim's death by his rash act while afflicted by a mental condition which significantly impairs his ability to appreciate the risk of his actions. As the Defence has submitted, the first stage of the *Ganesan* framework seems to focus solely on culpability-*increasing* factors.[51] Hence, at [58] of *Ganesan*, it is observed that "Category 1 would cover cases where … *[c]ulpability increasing factors* would either be absent altogether or present only to a very limited extent" [emphasis added]. Similarly, "Category 2 would cover cases where an accused's culpability is moderate. Cases falling within this category would usually involve *culpability increasing factors*" [emphasis added] (*Ganesan* at [61]). This being the case, it may be that the accused person's mental condition ought to be considered only at the second stage, as a mitigating factor personal to him.

(b) Second, and flowing from the first point, if the accused person's mental condition can only be considered at the second stage, the court is left with the unenviable task of applying a broad-brush approach to reach a sentencing discount. Such a discount, in cases of mentally disordered offenders, may be significant in comparison with the starting imprisonment sentence recommended by the *Ganesan* categories. This is in substance the Prosecution's approach in this case; they submit that

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51 Mitigation at para 106.

a two-year sentencing discount ought to be given, in effect halving the recommended starting sentence of 4.5 years that the Prosecution itself sought. But there is little to justify why a *two*-year discount, in particular, is appropriate. Indeed, it may equally be argued that given the significant impairment to the accused person's judgment, a three-year sentencing discount is more appropriate. The result of such a "bulk-discount" approach is to promote an arbitrary and unprincipled approach towards the sentencing of offenders afflicted by a mental condition.

(c) Third, the culpability-centric methodology adopted in *Ganesan* does not lend itself easily to application in cases of traffic offences that differ significantly from the ordinary cases analysed in *Ganesan* itself. As expressed in *Kong Peng Yee* at [59], when faced with a mentally disordered offender, the court must be alive to the appropriate balance to be struck between the four sentencing principles. However, the overt focus on the *culpability* of the offender under the *Ganesan* framework does not allow the court to conduct such a balancing exercise. As expressed in *Hue An Li* at [73], while the blameworthiness (or culpability) of an offender is a relevant factor,

> … [t]he law does take into account considerations that go beyond moral assessment. … In particular, general deterrence, prevention and rehabilitation do not quite equate with a moral assessment of the offender. General deterrence has less to do with the moral condemnation of individual offenders, and more to do with advancing the public interest of reducing crime by deterring the general public from similarly offending. Prevention is concerned with incapacitating offenders who pose a danger to society at large. Rehabilitation, where it is a dominant consideration, is aimed at turning offenders away from a life of crime by altering their values.

Sentencing principles

Deterrence is of limited weight

56 Turning to the sentencing principles, I first consider the applicability of both general and specific deterrence in this case.

General deterrence

57 As summarised by See J in *GCX v Public Prosecutor* [2019] 3 SLR 1325 ("*GCX*") at [53]:

> General deterrence may have a lesser role to play where the offender has a mental illness before and during the commission of an offence, and this is particularly so if a causal relationship exists between the mental disorder and the commission of the offence: *Kong Peng Yee* … at [69]; see also *Ng So Kuen Connie v PP* [2003] 3 SLR(R) 178 ("*Connie Ng*") at [58] and *Lim Ghim Peow* [[2014] 4 SLR 1287 ("*Lim Ghim Peow*")] at [28]. As Chao Hick Tin JA explained in *Soh Meiyun v PP* [2014] 3 SLR 299 ("*Soh Meiyun*") at [43], this is because general deterrence assumes persons of ordinary emotions, motivations, and impulses who are able to appreciate the nature and consequences of their actions, and who behave with ordinary rationality and for whom the threat of punishment would be a disincentive to engage in criminal conduct.

58 The case of *Connie Ng*, cited by See J in the above passage, demonstrates the decreased significance of general deterrence as a sentencing

consideration for offenders suffering from mental illness during the commission of an offence. There, the appellant claimed trial to a charge of throwing 25 items, including one dumbbell weighing 3lb from her apartment on the seventh floor of a condominium block. It transpired that the appellant was suffering from hypomania at the time of the incident. The trial judge sentenced the appellant to two months' imprisonment. On appeal, Yong Pung How CJ held that "considerably less weight" should be given to the element of general deterrence where there is a causal link between the offender's mental state and the acts that culminated in the offence (*Connie Ng* at [58]). Furthermore, the psychiatrist for the Prosecution had opined that the appellant was "unlikely to commit the same acts again if she continues treatment and follow-up" and that the appellant's mental condition could worsen if she were imprisoned. In the unique circumstances, Yong CJ considered that the imprisonment sentence was manifestly excessive. He thus imposed the maximum fine of $250 in lieu of the usual custodial tariff of imprisonment.

59 In this case, Dr Goh's uncontroverted and reasoned opinion is that the accused person's acute psychosis at the time of the offence had significantly impaired his judgment, causing him to discount the risks associated with his actions.[52] Hence, even if his acute psychosis was not the "but for" cause of the commission of the offence, a causal relationship is plainly borne out on the facts.

60 Furthermore, "general deterrence is directed at educating and deterring other like-minded members of the general public by making an example of the particular offender" (*Lim Ghim Peow* at [36]). Given the very low incidence of road traffic accidents that are linked to a mental condition, little public interest

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[52] SOF Annex I, para 21.

is advanced by adopting excessive measures to restrain this very limited class of persons from offending: see *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 ("*Goh Lee Yin*") at [93]. Such persons may not even be deterred from re-offending if, like the accused person in this case, the onset of the mental condition was unforeseeable. The circumstances would of course differ if the offender in question had skipped his medical treatment plan persistently, such that the onset of the mental condition was self-induced (see *Goh Lee Yin* at [95]). This is not the case here. The accused person had not consulted a psychiatrist, nor did he know of his susceptibility to psychosis, prior to the offence.[53]

61 In the circumstances, I find that general deterrence plays a limited role in this case.

Specific deterrence

62 Similarly, specific deterrence ought to be given little weight as it is of little, if any, relevance in the present case. The Court of Appeal in *Lim Ghim Peow* held at [36] that "the sentencing principle of *specific* deterrence *may* be of limited application in cases involving mentally disordered offenders" as the principle

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[53] SOF Annex I, para 4.

> is premised on the assumption that the offender can balance and weigh consequences before committing an offence … The aim of specific deterrence is to deter the particular offender concerned from committing any further offence. It follows that where the offender's mental disorder has seriously inhibited his ability to make proper choices or appreciate the nature and quality of his actions, it is unlikely that specific deterrence will fulfil its aim of instilling in him the fear of re-offending.

63 Here, it is undoubted that the accused person's mental disorder seriously inhibited his ability to make proper choices at the time of the offence. There is no evidence to suggest that his rash act was premeditated or formulated out of conscious choice, in response to his feelings of jealousy, envy, hatred or anger (see *Kong Peng Yee* at [67]). Instead, like the offender in *Kong Peng Yee*, who stabbed and killed his own wife in a psychotic episode (*Kong Peng Yee* at [66]), the accused person's acute psychosis in this case severely impaired his ability to make reasoned decisions. Thus, while he was aware at the material time that an accident was imminent given that he was speeding against the flow of traffic,[54] he continued with his errant conduct, putting the lives of himself and his son, as well as other road users, at abject risk. As explained in *Kong Peng Yee* at [72], "[s]pecific deterrence is premised on the assumption that the offender can weigh consequences before committing an offence". The accused person here plainly could not do so. In the words of Dr Goh, "his judgment was significantly impaired by his acute psychotic symptoms that lead [*sic*] to him discounting the risks associated with his actions, despite signs of danger he observed and warnings from his son then".[55]

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54 SOF Annex K, para 3.

55 SOF Annex I, para 21(b).

Rehabilitation is not the dominant sentencing principle

64 It is thus the case that the accused person's psychiatric condition renders deterrence less effective or relevant, such that rehabilitation may take precedence (see *Kong Peng Yee* at [59(e)]).

65 However, this does not mean that rehabilitation must always remain the foremost consideration in offences committed due to a psychiatric disease. Where an offender commits a particularly heinous or serious offence, "it would surely not be correct to say that such an offender ought to be rehabilitated to the exclusion of other public interests": *Goh Lee Yin* at [107]. In such cases, the retributive principle may feature prominently; in particular, "if the offender's mental disorder did not seriously impair his capacity to appreciate the nature and gravity of his actions": *Lim Ghim Peow* at [39]. The protection of the public from such "dangerous" offenders may also be relevant, notwithstanding the fact that the offender was mentally disordered during the commission of the offence: *Goh Lee Yin* at [108]; *Lim Ghim Peow* at [39]. Ultimately, the court's task lies in striking the right balance between the competing interests of the individual's need for rehabilitation and the wider societal interests at play.

Retribution

66 The principle of retribution seeks to accord punishment for the offender's wrongdoing. Underlying the principle is that the punishment must be proportionate to the degree of harm occasioned by the offender's conduct, and his culpability in committing the offence: *Kong Peng Yee* at [73]. However, even when the harm caused is very severe, the accused person's culpability may be attenuated if the offence in question was the work of a disordered mind: *Kong Peng Yee* at [75] and *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*") at [72] and [107].

67 In *Ng Hai Chong Brandon v Public Prosecutor* [2019] SGHC 107 ("*Brandon Ng*"), the offender pleaded guilty to a charge under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed), for driving against the flow of traffic along the AYE from 1.26am to 1.28am, traversing about 2km at an average speed of 50km/h. Although traffic flow at the time was moderate, no one was hurt. However, the drivers of at least four other vehicles had to take evasive action. The offender had driven under the influence of alcohol at the material time, and the psychiatrist assessed him to have suffered from major depressive disorder ("MDD") at the time of offence. He further opined that the MDD was a contributory link to the offender's behaviour. Moreover, as the offender's psychiatric condition was treatable, he recommended a 24-month Mandatory Treatment Order ("MTO"). Aedit Abdullah J considered that a 24-month MTO was appropriate on the facts of the case, where rehabilitation was the dominant sentencing principle. However, the learned judge noted at [22] that, had the offender caused injury or damage, "deterrence and retribution would have overridden the principle of rehabilitation as to render an MTO inappropriate".

68 *Brandon Ng* thus demonstrates that, in offences relating to road traffic incidents committed by an offender with a mental condition, the *harm* caused by the offender's conduct is relevant in determining the weight to be given to the principle of retribution. Hence, while the culpability of the offender in *Brandon Ng* was reduced because of his MDD, it did not necessarily make the retributive principle insignificant, since retribution entails the consideration of the twin conceptions of harm *and* culpability (see *Kong Peng Yee* at [73]). It was only because no harm was caused, together with the offender's reduced culpability due to MDD, that the learned Judge held that the principles of deterrence and retribution did not outweigh the principle of rehabilitation and that an MTO was appropriate (*Brandon Ng* at [39]–[42]).

69 As Sundaresh Menon CJ observed in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*") at [97], albeit in the context of a drunk driving offence, where hurt and injury result, the court must attribute necessary weight to the retributive principle. In so doing, the court may have regard to the degree of *actual* and *potential* harm caused. The extent of the harm caused, or the outcome of the offender's conduct, is relevant because there is an "intuitive moral sense that outcomes do matter" (*Hue An Li* at [70]). As such, even in the context of causing death by a negligent act, the court must factor in the extent of harm caused, although such a factor is not determinative of the sentence meted out (*Hue An Li* at [76]).

70 In this case, while the accused person's culpability is reduced, because his judgment was impaired by his acute psychosis, I have to give sufficient weight to the principle of retribution because of the extensive harm caused by him. In *Ganesan*, See J considered that while the harm caused by a s 304A(*a*) PC offence is, by definition, the death of a victim, there will be cases where the harm caused by the offence is exceptional, such as where more than one death is caused (*Ganesan* at [54] and [56]).

71 In my view, the harm caused in this case was plainly exceptional. Apart from the death of a motorist, four other victims suffered serious injuries, with three of them suffering fractures that amounted to grievous hurt.[56] V3 also suffered a right ring finger middle phalanx amputation.

72 The property damage caused by the accused person was also significant. The deceased person's and V1's cars had to be scrapped, and so did V3's

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[56] SOF para 16.

scooter. There was also damage to a bus and to the AYE's wall cladding.[57] I do not accept the Defence's argument that the property damage ought not to be given significant weight, as the accused person or his insurers would largely cover it.[58] Unless the accused person's insurers repudiate his motor insurance policy, the monetary loss flowing from property damage is inevitably borne by the insurers. While the insurers may be obliged to cover the costs flowing from the collisions, it remains that property damage was caused, and this must be a relevant consideration in considering the extent of harm caused by the accused person.

73 It was also observed in *Stansilas* at [97] that *potential harm* may be considered in determining the appropriate weight to be given to the retributive principle. If not for the evasive actions of other road-users on that fateful morning, they could have suffered serious injuries. Prior to entering the AYE, the accused person had driven against the traffic on the motorcycle lane of the Tuas Checkpoint. It was largely fortuitous that the motorcycles were able to take evasive action against the accused person's oncoming car, such that more severe and extensive harm was not caused. It was also fortunate that V3 and V4, who were flung off V3's scooter upon being hit by the accused person's car, did not suffer more severe injuries or meet with a further accident with oncoming vehicles on the AYE while they were lying on the ground following the collision.

74 In totality, I am therefore satisfied that the extensive and severe harm caused as well as the potential harm caused by the accused person's rash act

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57 SOF paras 22 and 23.

58 Mitigation, para 123.

were sufficiently exceptional such that, notwithstanding that his culpability was reduced by his mental condition, the principle of retribution is of significant weight and importance.

Prevention

75 The principle of prevention, which entails the protection and safety of the public through the incapacitation of dangerous or persistent offenders, may also be a relevant consideration (*Stansilas* at [98]).

76 However, I note that in this case, the danger posed by the accused person would likely only materialise if his acute psychosis were to relapse. In this regard, Dr Goh has noted that the accused person has complied with his psychiatric treatment, and has consulted a psychiatrist in private practice. In his opinion, the accused person appears to have the requisite insight into his mental condition and his need for treatment. His symptoms of acute psychosis appeared to have resolved within a short period. Thus, while continued psychiatric treatment was recommended, Dr Goh reported that he did not anticipate any risk factor(s) that pointed towards the need for a significant period of rehabilitation.[59]

77 Given the accused person's acknowledgment of his mental condition, as well as his compliance with treatment, I find that the danger posed by the accused person is minimal, such that the principle of prevention has limited relevance in the context of sentencing him.

78 In this regard, I note that in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 707 ("*Constance Chee*") at [16], it was observed

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[59] SOF Annex J, p 2.

that an indeterminate prison term ought to be avoided "when addressing offenders with an unstable medical or mental condition *if* there is a reasonable basis for concluding that the offender's medical condition could stabilise and/or that the propensity for violence would sufficiently and satisfactorily recede after medical treatment and continuing supervision" [emphasis in original]. This is precisely the case here, as made clearer by the fact that the Prosecution has not submitted that prolonged incarceration is necessary to prevent the accused person from posing a threat to the general public. It thus appears to be accepted that the accused person's mental condition will remain stable, according to Dr Goh's professional opinion, so long as he remains compliant with his psychiatric treatment.

Balancing the sentencing principles

79 From the above, the key sentencing principle is that of retribution, given the exceptional harm caused by the accused person. The other sentencing principles of deterrence and prevention are less relevant. The issue is thus whether, notwithstanding the weight to be given to the retributive principle of sentencing, rehabilitation ought to be the dominant sentencing principle.

80 In determining whether rehabilitation ought to take precedence, the court must balance the sentencing principles at play. In so doing, the court should not focus solely on the offender's prospects for rehabilitation. The assessment of an offender's rehabilitative potential is a relative and comparative exercise: *GCX* at [33].

81 The authorities show that the balance to be struck in a case where severe harm is caused is a difficult one which varies depending on the facts of the case.

(1) *ASR*

82 To determine the right balance to be struck, I consider first the Court of Appeal's recent decision in *ASR*. In that case, a 14 year-old male offender with an IQ of 61 and a mental age of between eight and ten raped a 16 year-old female victim. He also inserted his finger and a blunt object into her vagina. When he turned 16, he pleaded guilty to one count of aggravated rape and two counts of sexual assault by penetration, and consented to six other charges taken into consideration for sentencing purposes. The High Court sentenced him to reformative training. The Prosecution appealed, arguing that the appropriate sentence ought to be between 15 and 18 years' imprisonment, with at least 15 strokes of the cane.

83 In dismissing the Prosecution's appeal, the Court of Appeal applied the two-step approach laid down in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*"). Under the *Al-Ansari* approach, rehabilitation is the dominant sentencing consideration for young offenders. However, rehabilitation may be displaced by other sentencing objectives in an appropriate case.

84 Considering first the objectives of deterrence, the court considered that the offender's state of mind, where he had difficulty in managing his impulses and controlling his actions due to his intellectual disability, meant that he was unsuitable to be used as a medium to deter others from offending. His inability to appreciate the full significance of his acts also made it difficult to ascribe any weight to specific deterrence (*ASR* at [119]).

85 Turning to the sentencing objective of prevention through incapacitation, the Prosecution submitted that given the offender's slowness to

reform due to his intellectual disability, a long period of incarceration was required for the protection of the public (*ASR* at [120]). The court rejected this, as rehabilitation is, as a matter of principle, the dominant sentencing consideration for a young offender like the offender in *ASR*. By framing the issue as it did, the Prosecution had failed to explain how the existence of the "risk" posed by the offender justified incapacitation over rehabilitation as the appropriate crime prevention objective (*ASR* at [121]). Furthermore, the proposed imprisonment sentence by the Prosecution was disproportionate, as it was based on sentencing frameworks that were not promulgated with offenders like the offender in mind (*ASR* at [149]). The Prosecution's position had also failed to consider the offender's intellectual disability, which substantially reduced his culpability (*ASR* at [148]).

86 As for retribution, while it was relevant as "an abiding consideration in sentencing that the sentence imposed must be proportionate to the gravity of the offence", the gravity of the offender's offences was significantly attenuated by his reduced culpability, given the causal link between his intellectual disability and his offending acts (*ASR* at [103] and [107]). Furthermore, the principle of retribution may be displaced, for example, by the principles of rehabilitation and prevention, and it does not easily lend itself to being treated as a dominant sentencing objective (*ASR* at [131]–[132]).

87 In the circumstances, rehabilitation was not displaced as the dominant sentencing principle by the other sentencing principles, although in concluding, the court noted that the rehabilitation sentence of reformative training was "the less imperfect" of two "sub-optimal options", with the other being the long period of incarceration submitted for by the Prosecution (*ASR* at [159]).

(2) *Kong Peng Yee*

88 I turn next to the case of *Kong Peng Yee*. There, a 68 year-old offender killed his 63 year-old wife in their home by attacking her with a knife and a chopper while he was experiencing a brief psychotic episode, which substantially impaired his mental responsibility for his actions. The offender pleaded guilty to a charge of culpable homicide not amounting to murder, and was sentenced to two years' imprisonment by the High Court. Upon his release from prison, he voluntarily resided as a patient at the IMH. The Prosecution appealed against his sentence, arguing that it was manifestly inadequate.

89 The Court of Appeal allowed the appeal, and increased the offender's sentence to six years' imprisonment. In the court's view, given that the offender's psychosis was causally linked to the offence and as it warped his understanding of reality, both general and specific deterrence were inapplicable (*Kong Peng Yee* at [69], [70] and [72]).

90 As for the principle of retribution, while the court recognised that the harm was "very great and indeed fatal", it held that the offender's culpability was very low, as "the brutality of the attack … was quite evidently the work of a disordered mind rather than a cold and cruel one" (*Kong Peng Yee* at [75]).

91 However, given that the principle of deterrence was rendered less effective by virtue of the offender's psychiatric condition, rehabilitation was to take precedence, since rehabilitation seeks to advance the greater public interest by reducing the risk of recidivism (*Kong Peng Yee* at [78]). Further, in the context of the case, rehabilitation was complementary with the principle of prevention, since rehabilitating the offender while in the confines of the prison

would in turn also result in better protection of the offender's family and the public (*Kong Peng Yee* at [79]).

92 In the circumstances, the court considered that a sentence of six years' imprisonment was appropriate to ensure continued compliance by the offender with his medication regime. This also took into account his positive prognosis, his insight into his condition, strong family support, and advanced age, while also assuaging to a reasonable degree any public concerns that a dangerous man was living in its midst (*Kong Peng Yee* at [99] and [100]).

(3) *Constance Chee*

93 Finally, in *Constance Chee,* the offender, a schizophrenic, kidnapped one Sindee and caused her death by causing her to fall from a block of flats. The psychiatrist reported that the most important protective factor for persons suffering from simple schizophrenia was maintenance therapy with antipsychotic drugs. He also opined that he was totally unconvinced that the offender would remain compliant with her medication regime if she were to be left to her own devices in future. The offender was still "remote from normality".

94 The Judge considered that for the offence of culpable homicide under s 304(*a*) of the Penal Code (Cap 224, 1985 Rev Ed), the *only* sentencing options were ten years' imprisonment or life imprisonment. No other options were permitted (*Constance Chee* at [4]). As with the cases cited above involving offenders afflicted by a serious mental condition, the Judge found that the principle of general deterrence was not a "real consideration" in the case given the "very real and palpable causal link between the illness and the two offences" (*Constance Chee* at [13]). Instead, the principal sentencing considerations were

rehabilitation of the offender and protection of the public (*Constance Chee* at [13]).

95 In determining the appropriate sentence amidst the two applicable sentencing principles, the Judge considered that a prison-appointed psychiatrist had confirmed that the offender's symptoms would abate with regular medication and adequate supervision of the symptoms. The offender had a good support system outside of the prison, which meant that her rehabilitation could continue to be secured such that "the risk of the [offender's] illness once again conflagrating into violence is fairly remote" (*Constance Chee* at [19]). As such, a term of ten years' imprisonment was preferred to a life imprisonment sentence.

(4) The appropriate balance in this case

96 The above cases show that the appropriate balance to be struck in cases which present a unique confluence of a severe mental condition and a serious offence is largely a fact-centric exercise. In such cases, the court has to consider the applicable sentencing principles at play.

97 As already explained above, retribution is an operative sentencing principle in this case. In my view, the rehabilitation principle is not of significant weight here. While the accused person was afflicted by his acute psychosis at the time of the offence, his symptoms have resolved within a short period. He continues to be compliant with his treatment and has insight into his mental health condition. Dr Goh also explained that a significant period of rehabilitation is unlikely to be required.[60]

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60 SOF Annex J, p 2.

98 The accused person is 56 years old. He is not young (*cf ASR*), such that rehabilitation is the presumptive dominant sentencing principle. Neither is he in need of mentorship or guidance that requires him to be placed in an environment where he is compelled to take his medication (*cf Constance Chee*), given his own awareness of the need for continued treatment. Unlike the case of *Kong Peng Yee*, where further incarceration was required to ensure the offender's compliance with his medication regime, the accused person in this case has aptly shown that he is able to comply with his medication regime outside of prison.

99 Therefore, I find that the rehabilitation principle does not feature strongly in this case. As was held in *Kong Peng Yee* at [78], "[t]he underlying aim of rehabilitation is to advance the greater public interest by reducing the risk of recidivism". Where such risk of recidivism can be reduced by self-help measures that exist beyond the criminal justice system, the law need not step in and take on the mantle of rehabilitating the offender.

100 In all, I find that retribution ought to be the dominant sentencing principle in this case. The significant harm (both actual and potential) caused in this case is a key consideration. In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334, the High Court observed at [30] that "rehabilitation is neither singular nor unyielding", and that it may be eclipsed by the principle of retribution if, for example, "the harm caused is severe". This is precisely the case here. However, I am also cognisant that the Court of Appeal has cautioned in *ASR* at [131] that "[r]etribution does not easily lend itself to being treated as a dominant sentencing objective", and that it is generally but a metric to ensure that the sentence imposed is commensurate with the offender's culpability and the harm that he has caused.

101 I also note that it is not uncommon to focus primarily on retribution. In *ASR* itself, the court recognised that judge-made sentencing frameworks that take the form of a harm-culpability matrix "embeds in a fundamental way retributive thinking in the sentencing exercise" (*ASR* at [131]). Similarly, in *Stansilas* at [97], Menon CJ observed that "when hurt and injury has resulted from the offender's conduct (such as his drunk driving), the retributive principle will not be easily overridden and the court must attribute necessary weight to it, having regard to the degree of *actual and potential harm* caused" [emphasis added].

102 As highlighted above, the actual and potential harm caused in this case were manifest. If not for the evasive actions of the other motorists who encountered the accused person head on, the death toll and extent of injuries could have been far more severe and extensive.

The appropriate sentence

103 I therefore proceed to consider the appropriate sentence, with a focus on the twin conceptions of retribution, namely, the harm caused (both actual and potential) and the reduced culpability of the accused person in causing such harm.

104 I begin with the accused person's culpability. I am of the view that a consideration of the culpability-increasing factors listed in *Ganesan*, namely his violation of multiple road traffic regulations and the high degree of rashness, is inappropriate. As explained above, the *Ganesan* framework did not envisage an offender such as the accused person, whose mental condition reduced his culpability. For the same reason, the Court of Appeal in *ASR* declined to adopt established sentencing frameworks for rape and sexual assault by penetration

(*ASR* at [149]), as the culpability of the offender in that case was "substantially reduced" because of the extent of his intellectual disability (*ASR* at [148]).

105 The query is thus, how substantially is the accused person's culpability reduced? I recognise that the Prosecution has focused on the fact that he was able to make conscious decisions, such as braking intermittently, staying within his lane, making lane changes, and executing a three-point turn when he could not proceed further on the motorcycle lane at Tuas Checkpoint.[61] However, it is undisputed that the accused person's judgment was significantly impaired by his psychotic condition.

106 In *Kong Peng Yee*, the Prosecution similarly maintained that the offender who stabbed his wife to death in a brief psychotic episode "retained full control of his actions". In rejecting the Prosecution's submission and finding that the psychotic episode was so overriding as to significantly reduce the offender's culpability, the Court of Appeal made the following observations (*Kong Peng Yee* at [64]–[66])

> 64 … The essence of a brief psychotic episode is that it warps the individual's sense of reality. Although the Respondent might have known how or even when to kill the Deceased, his mind was truly in an unreal world in which he had to kill or be killed. *The underlying factual basis for him to think or to feel the way he felt before and during the offence was totally irrational and was not just the working of an overly suspicious or jealous mind.* It is the equivalent of seeing a person seeking to embrace him as one trying to engulf and suffocate him or a delusional architect planning a beautiful mansion on imaginary rocks. The Respondent's delusion altered his appreciation of his actions significantly.
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> 65 The psychosis which plagued the Respondent also served to distinguish this case from many of the precedents

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61 PAS, paras 18 to 19.

> cited to us. The moral culpability of mentally disordered offenders lies on a spectrum. On the one hand there are offenders who have temporary and situational mental disorders who retain their understanding of their actions and can reason and weigh the consequences. … The mental disorder in such cases can only ameliorate to a limited extent the criminal conduct because the offender's mind is still rational. In such cases, deterrence and retribution should still feature because depression, even if severe, cannot be a licence to kill or to harm others.
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> 66 On the other hand, *there are offenders whose mental disorders impair severely their ability to understand the nature and consequences of their acts, to make reasoned decisions or to control their impulses.* The Respondent's brief psychotic episode was in this category. He exhibited incoherent and irrational behaviour before, during and after the offence. He muttered incoherently to people he did not know. He stabbed and slashed unrelentingly at an elderly, defenceless woman with two dangerous weapons. Whatever seemingly rational decisions that he made were premised on totally unreal facts and completely irrational thoughts. His actions were not merely a maladaptive response to a difficult or depressive true situation, such as a temporary loss of self-control. Instead, they emanated from an impaired mind.
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> [emphasis added]

107 The present case has similarities with *Kong Peng Yee*. Here, it bears reminding that the undisputed purpose of the accused person embarking on the trip on that fateful morning was to send his son to work. Instead, he exceeded his intended destination by about 23 km, and drove irrationally onto the motorcycle lane at Tuas Checkpoint. When he could not proceed any further, he then sped against the flow of traffic, until his progress was halted by the collision that killed an innocent motorist.

108 I accept that the accused person appeared to be fully in control of his vehicle, as seen by his ability to manoeuvre in tight spaces, and to execute a three-point turn when seeking to exit the checkpoint. However, his actions were irrational when viewed alongside the underlying factual basis in that he felt

compelled by "[G]od" to drive as he did.[62] His acts "emanated from an impaired mind", much like the offender in *Kong Peng Yee*.

109 Thus, I find that the culpability of the accused person is reduced, because of his mental condition at the time of the offence. However, I consider that, unlike the offender in *Kong Peng Yee*, the accused person's judgment in this case was not so substantially impaired such that the entirety of his actions may be pinned on the psychotic event. In *Kong Peng Yee*, the offender displayed deeply irrational behaviour before, during and after he committed the offence of killing his wife. As the court observed, the offender had a normal and long marital relationship with his wife, and he did not suspect that she was being unfaithful. Yet, spurred by his psychosis, he attacked his wife while she was folding clothes and posed no threat to him. There was no catalyst for the attack. After he killed his wife, he reported that he felt "happy", and appeared dazed and was quiet. In totality, the entirety of his conduct "clearly showed a disturbed mind which was detached from reality" (*Kong Peng Yee* at [63]).

110 I accept that the accused person's motivations for his actions were spurred by his disturbed mind. However, his degree of impairment did not appear to be as severe as the offender in *Kong Peng Yee*. In this regard, he reported to Dr Goh that he had actively applied brakes in response to traffic and steered his car to stay within the lanes. He even reported that his son had cautioned him to stop when he could not proceed any further on the motorcycle lane at Tuas Checkpoint. While driving against the traffic, he was aware that a collision was imminent. Significantly, after the collision with the deceased, the

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62 SOF Annex I, p 3, paras 14 to 15.

accused person maintained awareness of the situation and knew that he could not open his car door, and he sensibly asked his son to call his wife.[63]

111 It is difficult to pinpoint with precision the exact culpability of an offender's conduct when the offender is acting under the influence of a severe mental illness. Nonetheless, this court is tasked with assessing his culpability for the purposes of arriving at a just and fair sentence in the overall circumstances of the case. In totality, I find that, while the accused person's mental condition reduced his culpability for the offence, it is not so substantial as to vindicate him of much of the blame for his harmful actions.

112 Turning to the aspect of harm, I consider that the actual and potential harm of the accused person's actions was a significant aggravating factor. The harm caused in this case was extremely severe. Apart from the death of a motorist, it also resulted in serious injuries to four other road users. There was also significant property damage. Furthermore, had other motorists not succeeded in taking evasive action from the accused person's oncoming and speeding vehicle, the potential harm could have been far greater, especially if one were to consider that the accused person had driven against traffic on the motorcycle lane at Tuas Checkpoint.

113 Nonetheless, I recognise that the accused person has pleaded guilty, and appears to have been cooperative with the investigations. The Prosecution submits that little weight ought to be given to his plea of guilt given the overwhelming evidence against him.[64] In this regard, I accept the Defence's

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63 SOF Annex I, p 3, para 15.

64 PAS para 21.

submission that the video-evidence against the accused person only goes towards the *actus reus* of the offence. The plea of guilt thus has value in that it negated the need for a protracted trial to investigate the *mens rea* of the accused person. This was also made easier by the fact that he was cooperative with the appointed psychiatrist, Dr Goh, such that an undisputed diagnosis was arrived at. In the circumstances, the plea of guilt saved much valuable time and resources.

114 Furthermore, I note that the accused person had sought psychiatric treatment after the offence and has been compliant with his psychiatric treatment. Such conduct signals remorse of his actions, and a desire to prevent future recurrence of the grave consequences that could result.

115 I therefore find that mitigating weight ought to be given to the accused person's cooperativeness, plea of guilt, and his remorse.

Conclusion

116 Having considered all the above factors, a sentence of one year imprisonment strikes a proper balance between the significant harm (both actual and potential) caused by the accused person and his reduced culpability given his medical condition.

117 For completeness, I should also mention that in *Ganesan*, the offender, in the course of trying to execute a U-turn, cut across two lanes of the opposite side of the road and collided into the motorcycle ridden by the victim, with his wife as the pillion rider. He was similarly charged with an offence under s 304A(*a*) of the PC and was convicted after a trial and sentenced to 12 weeks' imprisonment for causing the death of the pillion rider who was then five months pregnant. Her unborn child also did not survive the accident. On appeal,

See J enhanced the imprisonment term to five months. In arriving at the sentence, See J applied the sentencing framework that he had laid down for such cases as set out at [39] above and found that no culpability-increasing factors were present in that the offender did not violate any traffic regulations and his conduct did not involve a high degree of rashness. The offender's culpability was "more akin to that normally associated with gross negligence" (*Ganesan* at [29]). Nonetheless, See J also considered than since more than one death was caused (to the pillion rider and her unborn baby), extraordinary harm was caused, and that this had to be reflected by placing the case at the higher end of Category 1.

118 I recognise that the eventual sentence arrived at may appear harsh at first blush given that unlike the offender in *Ganesan*, the accused person was afflicted with a mental condition. However, my evaluation of the applicable principles has led me to conclude that it is the most appropriate sentence having regard to the overall circumstances of this difficult and most unfortunate case. Amidst the multitude of serious injuries caused, a human life has also been lost. Compared to the offender in *Ganesan*, the potential for far more severe harm was also greater here given that the accused person had driven against the flow of traffic at a high speed and on the fastest lane for a prolonged period. As mentioned, it was also perhaps fortunate that V1 to V4 did not suffer more severe injuries. In totality, retributive justice mandates that the accused person be adequately punished for his actions, which, while spurred by an impaired mind, were not the acts of an automaton; the accused person's conduct also suggest that his mental state was not as severely impaired as the offender in *Kong Peng Yee.* In the entirety of the circumstances, I therefore find a sentence of one year imprisonment to be appropriate.

119 As for the disqualification order, given the potentially dangerous consequences that may result from the accused person's act of driving, and in light of the exceptional harm caused, I find that banning the accused person from driving all classes of vehicles for a period of 12 years is prudent, and I order accordingly.

120 Before closing, a point may be made about the lack of breadth in sentencing options that are available to the courts in a case such as the present. In *Constance Chee*, V K Rajah J (as he then was) observed at [29]:

> 29 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. Should the offender's medical condition stabilise without any real risk of a relapse it would be quite unjust for him or her to continue to be incarcerated after rehabilitation through medical attention when he or she no longer poses any further risk to the public upon a return to the community. It is apodictic that in such an instance the underlying rationale for the second of the *Hodgson* criteria (see [5] above) no longer prevails. … In order to properly and fairly sentence offenders whose medical condition might potentially be reversed through medical attention and/or with the passage of time, the courts should be conferred the *discretion to impose a sentence band with appropriate minimum and maximum sentences tied to periodical medical assessments and reviews*. This will minimise the rather unscientific and imprecise conjecture that is now inevitably prevalent when determining appropriate sentences for such offenders. The proposed approach, while fairer to offenders, will also concomitantly serve to address and assuage public interest concerns on adequate sentencing as well as protection from mentally ill offenders with a propensity for violence. … [emphasis added]

121 The learned judge's observations remain relevant today. While a term of imprisonment may achieve the retributive principle, which underpins the

present case, it may be argued that the greater public interest could be secured by ensuring that the accused person remains compliant with his medical treatment. This could prevent future recurrence of his acute psychosis, thus protecting him and those around him from the harm that could result. The law does not empower me to make an order mandating periodic medical assessments and reviews of the accused person's mental health condition in future. Nevertheless, I hope that the accused person will continue, in his good sense, to be compliant with his psychiatric treatment.

Vincent Hoong
Judicial Commissioner

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