

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2021] SGHC 187

Criminal Case No 47 of 2018

Between

Public Prosecutor

And

Gaiyathiri d/o Murugayan

FOUNDATIONS OF DECISION

[Criminal Law] — [Offences] — [Culpable homicide] — [Diminished
responsibility]

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

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Public Prosecutor
v
Gaiyathiri d/o Murugayan

[2021] SGHC 187

General Division of the High Court — Criminal Case No 47 of 2018
See Kee Oon J
23 February, 29 April, 22 June 2021

4 August 2021

See Kee Oon J:

1 The Accused, Gaiyathiri d/o Murugayan, pleaded guilty before me on 23 February 2021 to 28 offences under the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”). The most serious of these offences was a charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code,¹ for having caused the death of her foreign domestic worker. Another 87 related charges were taken into consideration, with her consent, for the purpose of sentencing.

2 On 22 June 2021, I sentenced the Accused to an aggregate sentence of 30 years’ imprisonment. The Accused has appealed against her sentence. These are my grounds of decision, incorporating the oral remarks I had made in sentencing the Accused.

¹ Statement of Facts at [67].

Facts

3 At the time of the offences, the Accused was a 36-year-old homemaker. The Deceased, Piang Ngaih Don, was a 24-year-old single mother from Myanmar, who was employed in the Accused’s household as a domestic worker at the material time.²

4 The Accused and the Deceased resided in a three-bedroom flat (“the flat”) along with the Accused’s husband, Kevin Chelvam (“Kevin”), the Accused’s mother, Prema d/o S Naraynasamy (“Prema”), as well as the Accused’s two young children (“the children”).³ At the material time, there were also two tenants residing in one of the bedrooms in the flat.⁴

5 The Deceased began her employment in the Accused’s household on 28 May 2015. She had no prior experience working outside Myanmar.⁵ As a condition of employment, the Deceased agreed to forgo having a handphone or any days off, in exchange for higher pay.⁶ Kevin was the Deceased’s registered employer, and the Deceased’s duties included household chores in addition to assistance with the care of the two children, who were four years old and one year old respectively in July 2016. The Accused was responsible for the day-to-day care, supervision, and welfare of the Deceased.⁷

² Statement of Facts at [1].

³ Statement of Facts at [3].

⁴ Statement of Facts at [4].

⁵ Statement of Facts at [7].

⁶ Statement of Facts at [7].

⁷ Statement of Facts of [8].

6 Early into the Deceased’s employment, the Accused became unhappy with the Deceased as she perceived her to be slow, to have poor hygiene practices, and to eat too much. The Accused established strict rules concerning hygiene and order in the flat, and would get angry with the Deceased whenever she perceived the latter to have disobeyed those rules.⁸ At the start, the Accused would raise her voice and shout at the Deceased when she was upset with her, but this escalated to physical abuse from October 2015 onwards.⁹

7 Through closed-circuit television (“CCTV”) cameras installed throughout the flat by the Accused and Kevin to monitor the Deceased and the children,¹⁰ 35 days’ worth of video camera footage (“CCTV footage”) was retrieved in the course of investigations. The CCTV footage documented the extensive abuse and ill-treatment inflicted upon the Deceased from 21 June 2016 till the Deceased’s eventual demise on 26 July 2016.¹¹

8 All 115 charges preferred against the Accused involved specific instances of abuse which were captured on CCTV. The particulars of the 115 charges are summarised in a table at Annex A to the Statement of Facts. I set out in the following paragraphs an outline of the facts pertaining to the 28 proceeded charges.

⁸ Statement of Facts at [9].

⁹ Statement of Facts at [10].

¹⁰ Statement of Facts at [11].

¹¹ Statement of Facts at [12].

Use of criminal force under s 352 of the Penal Code (DAC-902724-2018)

9 On 21 June 2016 at about 9.58pm, while the Deceased was in the kitchen toilet, the Accused took a bottle of cold water from the refrigerator and poured it over the Deceased’s head, before scolding her to “wake her up”.¹²

Criminal intimidation under s 506 of the Penal Code (DAC-902770-2018)

10 On 13 July 2016 at about 4.30pm, the Accused felt that the Deceased had not properly wiped the stove and kitchen tiles. The Accused called the Deceased to the kitchen and proceeded to slap, scold, and pinch the Deceased on her stomach, before pointing a kitchen knife at the Deceased, intending to cause her alarm. This last act was the basis of the s 506 charge. The Deceased retreated to the back of the kitchen where she was subjected to more physical abuse, part of which formed the subject-matter of a separate charge in DAC-902771-2018 for voluntarily causing hurt.¹³

Voluntarily causing hurt by means of a heated substance under s 324 read with s 73(2) of the Penal Code (DAC-902753-2018)

11 On 24 June 2016 at about 7.51am, while the Deceased was ironing clothes, the Accused knocked the Deceased on her head once with her hand. The Accused returned later and took the heated steam iron and pressed it against the Deceased’s forehead, whilst scolding the Deceased for having presumably burnt the Accused’s items. She then pressed the iron onto the Deceased’s right forearm.¹⁴

¹² Statement of Facts at [13].

¹³ Statement of Facts at [15]-[16].

¹⁴ Statement of Facts at [18].

Voluntarily causing hurt under s 323 read with s 73(2) of the Penal Code

12 On 22 other occasions, the Accused had voluntarily caused hurt to the Deceased, or had abetted Prema to voluntarily cause hurt to the Deceased, or had voluntarily caused hurt to the Deceased together with Prema in furtherance of the common intention of them both.¹⁵ These 22 charges were summarised and tabulated at paragraph 21 of the Statement of Facts.

13 Among the acts enumerated in the 22 charges, the Accused had on various occasions punched, slapped and kicked the Deceased. She had also hit the Deceased on multiple occasions on the body using her bare hands as well as with implements such as clothes hangers, a plastic bottle, a broomstick, a metal ladle or other household items. In some instances, the Deceased was assaulted on vulnerable parts of her body, such as her head, neck and groin.

14 Notably, on numerous occasions, the Accused had grabbed the Deceased by her hair and shaken her back and forth or from side to side and spun her head around, followed by hitting and/or kicking the Deceased as well as stamping on her body after she had fallen to the floor. She had also dragged the Deceased by her hair across the floor.

Wrongful restraint under s 341 of the Penal Code (DAC-902830-2018)

15 On 15 July 2016 from 12.26am to 5.41am, the Accused used a piece of string to tie the Deceased's hand to the window grille, in order to prevent the Deceased from leaving the bedroom at night. When the Deceased begged the Accused not to tie her up, the Accused hit her and scolded her, and told her she deserved to be tied up as she had been sneaking out at night to take food. The

¹⁵ Statement of Facts at [21]-[24].

Deceased was tied to the window grille for the 12 nights preceding her death on 26 July 2016. The Accused had disposed of the piece of string after the Deceased's death before the police arrived as she was worried that her act of tying up the Deceased would be discovered.¹⁶

Voluntarily causing grievous hurt by starvation under s 325 read with s 73(2) of the Penal Code (DAC-902842-2018)

16 For at least the 35 days preceding the Deceased's death, the Accused had not provided the Deceased with sufficient food. The Deceased's meals often comprised only sliced bread soaked in water, cold food from the refrigerator or some rice at night. The Deceased weighed 39 kg when she was first employed on 28 May 2015. She lost 15 kg during the 14 months she was employed in the Accused's household, weighing a mere 24 kg at the time of her demise.¹⁷

17 In the autopsy on the Deceased which was conducted on 27 July 2016 by Dr George Paul ("Dr Paul"), the forensic pathologist, the Deceased was noted to be emaciated and in a poor nutritional state. In Dr Paul's opinion, if the Deceased was subjected to further starvation, it would have resulted in severe and debilitating starvation changes which would lead to progressive multi-organ failure and, if left untreated, death. There was no evidence that the Deceased had any chronic or debilitating illness, pre-existing infection or disease which would result in her poor nutritional state of emaciation.¹⁸

¹⁶ Statement of Facts at [25]-[27].

¹⁷ Statement of Facts at [29].

¹⁸ Statement of Facts at [30]-[31].

Culpable homicide under s 304(a) of the Penal Code

18 On 25 July 2016, at about 11.40pm, the Deceased was doing laundry in the kitchen supervised by the Accused, when the Accused felt that the Deceased was working too slowly and proceeded to assault her by hitting her once on her neck with a clenched fist and pulling her hair. When the Accused noticed the Deceased swaying at the entrance to the kitchen toilet from the impact of the blows, the Accused told the Deceased not to “dance” and hit her on the head with a detergent bottle, causing the Deceased to fall backwards and become disorientated. When the Deceased attempted to stand, her legs gave out from under her.¹⁹

19 The Accused ordered the Deceased to get up from the toilet floor but she was unable to stand. The Accused called Prema over, who again ordered the Deceased to get up. Prema and the Accused then proceeded to pour a basin of water on the Deceased and sprayed water at her from the toilet hose in an attempt to wake her up. Prema told the Deceased to change out of her wet clothes, but as the Deceased was too weak to stand, Prema dragged her from the kitchen floor to the bedroom. In the bedroom, the Accused kicked the Deceased in her stomach, while Prema punched the Deceased’s neck and strangled her.²⁰ The Deceased asked for dinner, but she was denied food.²¹

20 At about 11.58pm, the Accused used a piece of string to tie the Deceased’s hand to the window grille. As she was doing so, she kicked the

¹⁹ Statement of Facts at [35].

²⁰ Statement of Facts at [36].

²¹ Statement of Facts at [37].

Deceased on the stomach, before leaving the Deceased to lie on the floor in her wet clothes.²²

21 On 26 July 2016 at about 12.11am, the Accused entered the bedroom and kicked the Deceased once, telling her to wake up when the alarm rang.²³ Between 4.57am and 5.00am, the Accused became angry with her failed attempts to wake the Deceased up. She proceeded to kick the Deceased and stomp on her head and neck area repeatedly, lifting up her body and grabbing her by her hair, extending the Deceased's neck backwards repeatedly, as well as strangling her intermittently.²⁴ Prema was in the bedroom and also tried to wake the Deceased up. As the Deceased remained unresponsive, both the Accused and Prema became concerned. At about 5.02am, the Accused poured a bottle of water over the Deceased's face in a further attempt to wake her up.²⁵

22 At about 7.28am, the Accused and Kevin came to check on the Deceased as she had remained motionless. Kevin then left for work. At about 9.22am, Prema propped the Deceased up against the bed and attempted to feed her some "Nestum" cereal drink and tried to warm her hands and legs to revive her. As the Deceased remained motionless, Prema suggested that they call a doctor.²⁶

23 Between 9.30am to 9.45am, the Accused called a nearby general practitioner ("GP") clinic, to request for the GP to make a house call. The GP in question was Dr Grace Kwan Wai Chee, and she had seen the Deceased at the GP clinic when the Accused brought her there for a medical check-up on 23

²² Statement of Facts at [38].

²³ Statement of Facts at [39].

²⁴ Statement of Facts at [40].

²⁵ Statement of Facts at [41].

²⁶ Statement of Facts at [43].

May 2016. The Accused falsely told the clinic nurse that she found the Deceased on the kitchen floor when she woke up and believed that the Deceased may have fallen. She claimed that the Deceased was in and out of consciousness and was still moving. She was told that the GP would not be available for at least the next 30 to 45 minutes, and was advised to call for an ambulance instead. However, the Accused insisted on waiting for the GP to attend to the Deceased.²⁷

24 The Accused and Prema changed the Deceased out of her wet clothes while waiting for the GP. At about 10.08am, they carried the Deceased out of the bedroom and lay her on the sofa in the living room.²⁸

25 At about 10.50am, the GP arrived at the flat, and found that the Deceased did not exhibit any signs of life. The GP informed the Accused and Prema that the Deceased was dead.²⁹ They expressed shock and claimed that the Deceased had been moving minutes before the GP arrived. The GP advised them to call the police to report the Deceased's death, but they asked if they could call an ambulance instead. The GP insisted that they should call the police and said that she would remain in the flat until the police arrived. The Accused remained hesitant. She called Kevin and informed him what had happened and Kevin said that he would return home immediately.³⁰

26 The GP asked the Accused if she had beaten the Deceased but the Accused denied having done so. The GP then decided to call the emergency services herself. She asked Prema if the Deceased had been fed as she appeared very thin and appeared to have lost weight compared to when she was last seen

²⁷ Statement of Facts at [44].

²⁸ Statement of Facts at [45].

²⁹ Statement of Facts at [47].

³⁰ Statement of Facts at [48].

at the GP clinic on 23 May 2016. Prema replied that the Deceased ate a lot. The paramedics arrived at about 11.26am, and pronounced the Deceased dead at 11.30am on 26 July 2016.³¹

27 The police arrived shortly after at 11.31am. The Accused told the police that she had found the Deceased lying on the kitchen floor that morning and had called Prema to help carry the Deceased to the sofa. When asked why she did not call an ambulance, the Accused said that the Deceased's condition was not serious, but she was only weak, and hence they decided to call the GP instead.³²

Autopsy report

28 An autopsy was performed by Dr Paul on 27 July 2016 at 11.44am at the mortuary, and the cause of the Deceased's death was documented as hypoxic ischaemic encephalopathy following severe blunt trauma to the neck. In addition, 31 recent scars and 47 external injuries were found on all parts of the Deceased's body.³³ In particular, the autopsy found that the Deceased's neck region was extensively emaciated with loss of contours of neck muscles. There were multiple abrasions and bruises to various parts of the neck, including crescentic shaped abrasions consistent with those from fingernails, as well as a recent fracture of the hyoid bone.³⁴

29 According to Dr Paul, the injuries to the body ranged from fresh or very recent injuries to those which were more than a month old. All the injuries were the result of some blunt force, save for those on the right forearm which were

³¹ Statements of Fact at [47]-[51].

³² Statement of Facts at [51].

³³ Statement of Facts at [53].

³⁴ Statement of Facts at [54]-[55].

related to contact with a heated steam iron. Dr Paul opined that the injuries to the neck as well as the other injuries sustained by the Deceased were collectively sufficient, in the ordinary course of nature, to cause death in the manner described.³⁵

30 In particular, Dr Paul opined in his further report dated 10 November 2017 that the manner in which the Deceased was held by the neck by the Accused on 26 July 2016, with her head pulled back by the hair and being shaken “like one shakes a rag doll”, would appear to be the most likely assault that resulted in the fracture of the Deceased’s hyoid bone. Such a fracture would not be fatal by itself but would indicate a very violent compression or blow to the upper front and side of the neck. The extensive force could have led to irreversible damage changes in the Deceased’s brain, and her poor nutritional state compounded her inability to tolerate the repeated trauma to her neck, leading to hypoxic ischaemic encephalopathy which resulted in death.³⁶

Diminished responsibility – the Accused’s psychiatric conditions

31 After the Accused’s arrest, she was assessed by several psychiatrists who diagnosed her to have suffered from major depressive disorder (“MDD”) with peripartum onset of moderate severity, as well as obsessive compulsive personality disorder (“OCPD”).³⁷ It was agreed by both the Prosecution and the Defence that the findings of Dr Derrick Yeo in his psychiatric report of 14 July 2019 were reflective of the Accused’s mental state.³⁸ Both her psychiatric

³⁵ Statement of Facts at [56]-[59].

³⁶ Statement of Facts at [58].

³⁷ Statement of Facts at [60]-[62].

³⁸ Statement of Facts at [64].

conditions of MDD and OCPD were deemed to have had a *substantial contribution* to the commission of the offences.³⁹

32 Nevertheless, Dr Derrick Yeo opined that the Accused was not of unsound mind at the time of the offences and was fit to plead. She was cognisant of her actions and purposeful in her conduct. She did not lack capacity to comprehend what she was doing. Although Dr Derrick Yeo found that her mental responsibility was partially impaired, she was assessed to be able to exercise conscious deliberation and volitional control throughout the commission of her offences.⁴⁰ Accordingly, in Dr Derrick Yeo's view, the defence of diminished responsibility under Exception 7 to s 300 of the Penal Code was applicable to the accused.⁴¹ Although the Accused had initially faced a murder charge, the Prosecution eventually proceeded on a charge of culpable homicide not amounting to murder.

Brief procedural background

33 The Accused admitted to all the foregoing matters which were set out in the Statement of Facts without qualification, and I convicted her on all 28 proceeded charges, after recording her plea of guilt on 23 February 2021. Having heard full submissions on sentencing by the Prosecution, as well as the Defence's mitigation plea, I adjourned the matter to deliberate on the appropriate sentence.

34 On 2 March 2021, the Accused's counsel on record (Mr Sunil Sudheesan and Ms Diana Ngiam (collectively "former counsel")) wrote to inform the court

³⁹ Prosecution's bundle of documents ("PBD") at p 108.

⁴⁰ PBD at p 108.

⁴¹ PBD at p 109.

of “certain issues” that had arisen relating to the hearing on 23 February 2021. I convened a case conference on 15 March 2021 where her former counsel applied to discharge themselves from acting for the Accused. I was informed that Mr Joseph Chen (“Mr Chen”) had been instructed by the Accused’s family to act for her in their place.

35 The Accused was present at this case conference but she did not appear to have communicated hitherto with Mr Chen or given him any instructions. She appeared undecided as to whether Mr Chen should take over the conduct of her case. In any event, Mr Chen had not been instructed by the Accused or her family to appear on her behalf at the case conference. I therefore convened a further case conference on 30 March 2021 so that Mr Chen could be present as well. On 30 March 2021, the Accused confirmed her intention for Mr Chen to act for her, whereupon I permitted her former counsel to discharge themselves.

36 Mr Chen formally took over conduct of the matter on 30 March 2021. He stated that his instructions were to further mitigate for the Accused and requested for time to take her instructions. A sentencing mention was scheduled for 29 April 2021 but Mr Chen’s instructions appeared to have shifted after 30 March 2021, from presenting a further plea in mitigation to seeking a reduction of the s 304(a) charge. It would appear from this that the Accused had sought to either qualify or retract her plea of guilt to the s 304(a) charge. After obtaining further clarification from the Accused, Mr Chen confirmed on 29 April 2021 that her instructions to him were not to qualify or retract her plea of guilt but only to further mitigate on her behalf.

37 The matter was then fixed for a further mention on 22 June 2021. I gave directions for a further written mitigation plea to be filed by 28 May 2021 and for the Prosecution to file reply submissions if necessary by 14 June 2021. Due

to additional COVID-related restrictions which affected his ability to see the Accused in May 2021, Mr Chen filed the further plea in mitigation on 8 June 2021 (“the further plea”). The Prosecution informed me that no further written reply submissions on their part were necessary, but reserved their right to make an oral reply.

The parties’ submissions on sentence

Prosecution’s submissions

38 The Prosecution submitted that the primary sentencing considerations were those of general deterrence and retribution.⁴² In particular, general deterrence was warranted in view of the fact that the case had involved the abuse of a domestic helper,⁴³ and retribution was warranted in view of the extent of harm inflicted on the Deceased by the Accused.⁴⁴ The Prosecution’s submissions sought to characterise the offences as one of the “worst types of cases of culpable homicide”,⁴⁵ in view of the horrific abuse and torture,⁴⁶ the duration and intensity of the physical abuse,⁴⁷ the psychological harm,⁴⁸ and blatant disregard of life on the part of the Accused.⁴⁹ With regard to the Accused’s psychiatric conditions, the Prosecution argued that this was not a material mitigating factor as it had already been taken into account in the

⁴² Prosecution’s sentencing submissions at [4].

⁴³ Prosecution’s sentencing submissions at [6].

⁴⁴ Prosecution’s sentencing submissions at [8].

⁴⁵ Prosecution’s sentencing submissions at [13].

⁴⁶ Prosecution’s sentencing submissions at [17]-[18].

⁴⁷ Prosecution’s sentencing submissions at [23].

⁴⁸ Prosecution’s sentencing submissions at [29].

⁴⁹ Prosecution’s sentencing submissions at [37].

reduction of the charge,⁵⁰ and that it did not displace the need for deterrence and retribution.⁵¹ Finally the Prosecution also submitted that the s 304(a) charge when considered in totality with the rest of the proceeded charges would have tipped the balance towards imposing a sentence of life imprisonment on the Accused.⁵² Alternatively, the Prosecution submitted that if the court was not minded to impose a sentence of life imprisonment, the global sentence of imprisonment should not be less than 27 years.

Defence's submissions

39 Through her former counsel, the Accused submitted that the primary sentencing principles should be those of retribution and rehabilitation.⁵³ In contrast to the Prosecution's submissions, it was submitted that sufficient mitigatory weight had to be placed on her mental condition,⁵⁴ and that the principle of deterrence had limited application in the present case as the Accused was suffering from a mental disorder.⁵⁵ Furthermore, it was argued that this case could not be considered as one of the worst types of culpable homicide,⁵⁶ and that in deciding if the Accused should be sentenced to life imprisonment, the court had to consider the *Hodgson* criteria laid down by the English Court of Appeal in *R v Rowland Jack Forster Hodgson* (1968) 52 Cr App R 113 ("*Hodgson*") at 114.⁵⁷ In summary, through her former counsel, the

⁵⁰ Prosecution's sentencing submissions at [43]-[44].

⁵¹ Prosecution's sentencing submissions at [51].

⁵² Prosecution's sentencing submissions at [93].

⁵³ Mitigation plea at [10].

⁵⁴ Mitigation plea at [57].

⁵⁵ Mitigation plea at [86].

⁵⁶ Mitigation plea at [106].

⁵⁷ Mitigation plea at [128].

Accused had initially submitted that she should be sentenced to not more than 14 years' imprisonment.⁵⁸

40 In the further plea, Mr Chen sought to reiterate the point made by her former counsel that the Accused did not have a prior history of maid abuse.⁵⁹ In addition, he submitted that the Accused's increased anxiety over the health and welfare of her children and perceived lack of good hygiene on the part of the Deceased as a cause of her children's various illnesses had played a significant part in her commission of the offences.⁶⁰ Mr Chen had also argued that rehabilitation should be the primary sentencing consideration,⁶¹ and had asked for a gag order in order to protect the Accused's children from the possible stigmatisation which may result from the significant media attention the case had drawn.⁶² Through Mr Chen, the Accused revised her position as to the appropriate sentence and submitted that a global sentence of eight to nine years' imprisonment would be sufficient.⁶³ These positions were adopted during the sentencing mention on 22 June 2021.

41 In addition, on 30 March 2021, in a handwritten mitigation plea submitted by the Accused, the Accused had made reference to her personal circumstances, such as the fact that Kevin had begun divorce proceedings, that her children were having a hard time coping in school, and that her mother had to undergo treatment for a kidney ailment while in remand. In her handwritten mitigation plea, the Accused also alleged physical abuse at the hands of her

⁵⁸ Mitigation plea at [10].

⁵⁹ Further Plea in Mitigation at [2].

⁶⁰ Further Plea in Mitigation at [11]-[14].

⁶¹ Further Plea in Mitigation at [19].

⁶² Further Plea in Mitigation at [22].

⁶³ Further Plea in Mitigation at [28].

fellow inmates while in remand, as well as unhappiness at the discharge of her former counsel.⁶⁴ This last point was apparently overtaken by events, given that the Accused had confirmed at the case conference on 30 March 2021 that she had no objections to her former counsel’s discharge, with Mr Chen taking over conduct of the matter henceforth.

42 At the sentencing mention on 22 June 2021, the Accused further confirmed through Mr Chen that she would rely on all three written mitigation pleas (*ie*, those filed by her former counsel, Mr Chen as well as her handwritten mitigation plea).

Issues to be determined

43 In determining the sentence, I considered all three written mitigation pleas, the oral submissions of both the Accused’s former counsel and Mr Chen on 23 February 2021 and 22 June 2021 respectively, as well as the submissions of the Prosecution. The two key issues which arose before me were:

- (a) the applicable sentencing principles in the present case; and
- (b) the mitigatory weight to be placed on the accused’s psychiatric conditions.

The applicable sentencing principles in the present case

44 In *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 (“*ADF*”), VK Rajah JA stated in the majority decision of the Court of Appeal at [55], that “[i]n a case of domestic maid abuse, ordinarily, the principles of deterrence and retribution take precedence” over the other principles of

⁶⁴ Accused’s Written Mitigation dated 30 March 2021.

prevention and rehabilitation, subject to the proviso that “[i]n every sentencing decision, a court has to judiciously assess which of the four principles apply, the interplay which these principles have with the factual matrix and how much weight they should be given before being applied to the matter at hand” (see *ADF* at [54]).

45 Notwithstanding the holding in *ADF* set out above, in sentencing a mentally disordered offender, it must also be remembered that there will be an ongoing tension between the sentencing principles of deterrence and rehabilitation. In this regard, the Court of Appeal in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 (“*Lim Ghim Peow*”) at [26], has also stated that the element of general deterrence “*may* be given considerably less weight” [emphasis in original], as an offender who suffers from a mental disorder is usually not an appropriate object for exemplary punishment (at [27]). Similarly, the sentencing principle of specific deterrence would generally be of limited application in cases involving mentally disordered offenders, as it is premised on the assumption that the offender can balance and weigh the consequences before committing an offence (see *Lim Ghim Peow* at [36]).

46 However, it is not the case that the element of general deterrence can never be accorded full weight in sentencing a mentally disordered offender, and much would depend on the circumstances of the case (see *Lim Ghim Peow* at [35]). Pertinently, the Court of Appeal emphasised in *Lim Ghim Peow* at [35] that “[i]f the nature of the mental disorder is such that it does not affect the offender’s capacity to appreciate the gravity and significance of his criminal conduct, the application of the sentencing principle of general deterrence may not be greatly affected”.

47 With the above observations in mind, it remained apposite in the present case to have regard to the relevant aggravating factors set out by the Court of Appeal when sentencing maid abusers (see *ADF* at [91]):

- (a) where serious injury and/or trauma was occasioned;
- (b) where there was use of weapons or objects in causing hurt;
- (c) the degree of abuse of position or authority;
- (d) the prolonged abuse over a period of time, especially if the severity of the abuse escalates over time;
- (e) where mental abuse takes place in conjunction with physical abuse;
- (f) the absence of genuine remorse.

The mitigatory weight to be placed on the accused’s psychiatric conditions

48 The Prosecution had characterised the Accused’s acts as “one of the worst (if not the worst) incidents of culpable homicide”,⁶⁵ in justifying the imposition of a sentence of life imprisonment.⁶⁶ On the other hand, both the Accused’s former counsel and Mr Chen had relied on the fact of her mental disorders to argue for lower sentences.

Life imprisonment in relation to mentally disordered offenders

49 In *Public Prosecutor v Aniza bte Essa* [2008] 3 SLR(R) 832 (“*Aniza (HC)*”), an offender who had pleaded guilty to abetment of culpable homicide

⁶⁵ Prosecution’s sentencing submissions at [41].

⁶⁶ Prosecution’s sentencing submissions at [93].

not amounting to murder under s 304(a) read with s 109 of the Penal Code 1985, was diagnosed to be suffering from moderate depression which had substantially impaired her responsibility. In the context of sentencing a mentally disordered offender, Chan Seng Onn J opined that the highest punishment of life imprisonment can be imposed in two situations (see also *Public Prosecutor v P Mageswaran and another appeal* [2019] 1 SLR 1253 (“*Mageswaran*”) at [45] – [49]):

(a) Where it can be cumulatively shown that the following three broad criteria enunciated by the English Court of Appeal in *Hodgson* (ie, the “*Hodgson* criteria”) are satisfied (see *Aniza (HC)* at [38]–[46]; *Neo Man Lee v Public Prosecutor* [1991] 1 SLR(R) 918 at [7]; *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 at [19]):

(i) that the offence or offences are in themselves grave enough to require a very long sentence;

(ii) that it appears from the nature of the offences or from the defendant’s history that he is a person of unstable character likely to commit such offences in the future; and

(iii) that if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.

(b) Where “the manner in which the defendant commits the offence is so cruel and inhumane that the defendant does not deserve any leniency whatsoever and that the only just sentence is the maximum of life imprisonment and any other sentence is simply too lenient ... Here the overriding concern is not so much the protection of the public from a likely repetition by the offender if released, but the need to mete out

the maximum punishment to register society's sheer abhorrence of what the offender has done, to deter others accordingly, and to ensure that the offender's punishment is therefore proportionate to the utterly sadistic and cruel acts [the offender] did" (see *Aniza (HC)* at [47]).

50 It should be noted that *Aniza (HC)* had been decided within the framework prior to the 1 February 2008 Penal Code amendments ("the Penal Code Amendments"), where the court was compelled to choose between ten years or life imprisonment as the maximum punishment. A closer examination of the preceding paragraphs of *Aniza (HC)* at [44]–[46], would show that Chan J had been elaborating on his concerns with this perceived "huge gulf" between ten years and life imprisonment and how the *Hodgson* criteria might apply. In my view, the observations made in *Aniza (HC)* at [47] should thus be read in that context, which has also been recognised implicitly by the Court of Appeal in *Lim Ghim Peow* at [56] and [58]. In this regard, the Court of Appeal has also separately held that the Penal Code Amendments, which have increased the sentencing range under s 304(a) to 20 years' imprisonment as an alternative to life imprisonment, ensure that the court no longer has to choose between the "two imperfect options" of life imprisonment or ten years' imprisonment (see *Mageswaran* at [44]). Accordingly, it is not clear if the observation in *Aniza (HC)* that "any other sentence [other than life] is simply too lenient" would still hold true under the current sentencing regime since the wide gap between ten years and life imprisonment has been narrowed by legislative amendment.

51 Even assuming that the court's observations in *Aniza (HC)* at [47] continue to be valid, it would appear that life imprisonment has not been imposed in any case by our courts where an offender is *not* deemed to be at risk of reoffending. A clear illustration is the post-*Aniza (HC)* case of *Lim Ghim Peow*, which might have well fallen under the "cruel and inhumane" epithet, as

the victim in that case was doused with petrol and set ablaze in a planned and premeditated act. However, even after taking into account the accused's psychiatric condition, a sentence of 20 years was imposed rather than life imprisonment, even though the offender had previous convictions and was assessed to have had a latent violent disposition, with an attendant risk of recidivism.

52 On the facts of *Aniza (HC)*, Chan J held that as the second *Hodgson* criteria was not fulfilled and there was no evidence that the offender had abetted a “slow, cruel and painful” killing, a sentence of life imprisonment was not warranted. A sentence of nine years' imprisonment was imposed instead (see *Aniza* at [48]–[49] and [53]–[57]). This sentence was upheld on appeal in *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 (“*Aniza (CA)*”). In delivering the judgment of the Court of Appeal, Chan Sek Keong CJ held at [71] that the *Hodgson* criteria serve as an appropriate *alternative* basis for imposing the sentence of life imprisonment on a mentally disordered offender, *ie* as an alternative to the principle that the highest punishment should only be reserved for the worst types of cases.

53 In this regard, the following considerations as to whether the maximum penalty of life imprisonment should be meted out under s 304(a) as set out by the Court of Appeal in *Mageswaran* at [49] are apposite to adopting a principled approach with regard to mentally disordered offenders:

To sum up, in considering whether the maximum penalty of life imprisonment under s 304(a) is warranted, **the sentencing court will have to be satisfied that the case before it is one of the worst type of cases of culpable homicides.** We note, parenthetically, that **life imprisonment is warranted, alternatively, where the *Hodgson* criteria are satisfied** such that the court is of the view that the mentally unstable offender will pose a “serious danger to the public for an indeterminate time” ... **In determining whether a case is one of the worst**

type of cases of culpable homicides, the sentencing court will have to examine the circumstances of the case from the perspective of: (a) the nature of the crime; and (b) the circumstances of the criminal. It would take an exceptional case, *devoid* of any mitigating circumstances, for a sentencing court to be satisfied that a case is one of the worst type of cases of culpable homicides warranting the imposition of the *maximum* sentence of life imprisonment.

[emphasis in italics in original, emphasis added in bold]

54 Reading *Mageswaran* together with *Aniza (CA)* at [71], it is clear that where the cumulative *Hodgson* criteria are met, a sentence of life imprisonment would be justified to protect society. However, where any of the *Hodgson* criteria are not met, the court should then turn to consider the established sentencing principles applicable to mentally disordered offenders (see [44]–[47] above), and where the court is satisfied that the case is one of the worst type of cases of culpable homicide, having examined the nature of the crime and the circumstances of the criminal, a sentence of life imprisonment may be justified even if the *Hodgson* criteria are not met.

Relevance of prosecutorial discretion to reduce the charge

55 In the Prosecution’s submissions, the argument was raised that as the Accused had her charge reduced to one under s 304(a) in view of her psychiatric conditions, to consider it again in sentencing could be viewed as an instance of double-counting as “[i]t would be unduly lenient if her psychiatric condition is *again* relied upon to avoid life imprisonment” [emphasis in original].⁶⁷

56 At the 23 February 2021 hearing, it was clarified and confirmed that the Prosecution did not dispute the fact that her mental disorders were relevant to sentencing, although the Prosecution continued to maintain its position that the

⁶⁷ Prosecution’s skeletal submissions at [44].

extreme circumstances of the offence must negate any mitigating value that might be attached to the Accused's personal circumstances, citing *Aniza (HC)* at [47].

57 In my view, there was no basis for the Prosecution's argument that the reduction of the murder charge on account of the accused's psychiatric conditions must be borne in mind when determining the sentence for the reduced charge, so as not to offend the rule against double counting.⁶⁸ It is settled law that the court determines the appropriate sentence based on the charge that is before the court (see *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012 at [29]). The fact that the charge in the present case had been reduced from a murder charge, and correspondingly whatever reason(s) the prosecution might have factored in for the purpose of exercising its prosecutorial discretion in reducing the charge, were not relevant considerations in sentencing. It must follow therefore that as a matter of principle, there was no question of double-counting if the Accused's psychiatric conditions were taken into account in determining the sentence.

58 The question before the court was how much weight, if any, to attach to her psychiatric conditions. This logically flowed from the Prosecution's clarification and concession at the hearing. This was in fact the focal point of the court's enquiry in past cases which were cited by both the Prosecution and Defence, including *Aniza (HC)* and *Lim Ghim Peow*. It is pertinent to note that in *Lim Ghim Peow*, the Court of Appeal had emphatically stated, in the context of a similar charge under s 304(a), that the existence of a mental disorder on the part of the offender is *always a relevant factor in the sentencing process* (at [25]).

⁶⁸ Prosecution's skeletal submissions at [43].

59 This is subject to the qualifier that “[a] mental disorder, even if it substantially impaired the offender’s mental responsibility for the commission of the offence and thereby reduced the offence (in the context of the offence of culpable homicide under s 299 of the [Penal] Code) from that of murder to that of culpable homicide not amounting to murder, cannot be invoked as a blanket excuse for every aspect of the offender’s criminal conduct” (see *Lim Ghim Peow* at [52]).

The appropriate sentence for the s 304(a) charge

60 Evaluating how much weight to attach to an offender’s psychiatric condition in the overall determination of sentence is a fact-specific exercise in each case. Reverting to the facts of the present case, as I have noted earlier, it was necessary to adopt a principled approach and take into account the accused’s psychiatric conditions in determining the appropriate sentence.

61 First, I considered the applicability of the *Hodgson* criteria. It cannot be disputed that the first and third *Hodgson* criteria were met in the present case, and it was only the second *Hodgson* criterion which was material. In this regard, I noted that the Accused previously had four other domestic helpers, and there was no evidence of any complaints against the Accused for abuse or ill-treatment. The Accused did not appear to have been a pathologically violent person prior to the material events. As Dr Derrick Yeo found, this suggested that the onset of her MDD linked to her OCPD at or around the time of the offences was a material factor which contributed to her offending conduct. Dr Derrick Yeo further opined that she was not deemed to be at risk of reoffending.⁶⁹ It would also appear that the Accused had been responsive to

⁶⁹ PBD at p 109.

psychiatric treatment.⁷⁰ She did not appear to be of unstable character or to have a propensity to pose a danger to the public. In my view, it was clear that the Accused would not fulfil the second *Hodgson* criterion, and hence I turned to consider the established sentencing considerations in relation to mentally disordered offenders.

62 The Statement of Facts and the accompanying CCTV footage told a shocking story of how the Deceased was abused, humiliated, tortured, starved and eventually made to suffer death at the hands of the Accused. The Deceased, a domestic worker in a foreign land, was completely vulnerable and utterly defenceless, and made to endure agonising physical and psychological harm for a prolonged duration before succumbing to her injuries. The Prosecution’s submissions were framed in forcefully emotive terms, but words cannot adequately describe the abject cruelty of the Accused’s appalling conduct.

63 In considering if this case fell properly within the description of one of the worst cases of culpable homicide, both (a) the nature of the crime, and (b) the circumstances of the criminal should be examined. While no concrete guideline or rule was purported to be laid down in *Mageswaran*, the Court of Appeal appeared to have adopted an exclusionary approach, in that in order for a case to be considered as one of the worst cases of culpable homicide, it should generally be found that there was “an absence or at least a lack of material mitigating circumstances” (see *Mageswaran* at [46]).

64 I agreed with the Prosecution that there were multiple aggravating factors. As noted at [47] above, all the relevant aggravating factors outlined by the Court of Appeal in *ADF* at [91] were present. Leaving aside for the moment

⁷⁰ PBD at p 108.

the Accused's mood disorders and personality disorder, there were few if any material mitigating factors. Her lack of antecedents, plea of guilt and cooperation with the authorities carried little mitigating force. The objective evidence of the relevant facts which gave rise to the charges was cogent and well-captured on CCTV. The Accused could not be regarded as a first offender on account of the fact that she faced 115 charges for separate and distinct offences which covered only the duration of 35 days preceding the Deceased's death: see *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15] and [17].

65 The Accused claimed to be remorseful. I was not persuaded that she was indeed genuinely remorseful; her immediate reaction and subsequent conduct upon discovering that the Deceased was unresponsive on the morning of 26 July 2016 certainly was not indicative of any remorse but pure instinctive self-preservation. There was absolutely no remorse in any of the Accused's actions that morning, when she delayed obtaining proper medical attention for the Deceased and sought to disavow and cover up her role in causing the Deceased's injuries. This was inconsistent with her claims to have cooperated in the investigations. It would also appear from the various psychiatric reports that she was not prepared to accept responsibility for her actions for at least a considerable period after her arrest.⁷¹

66 Furthermore, the further plea tendered by Mr Chen continued to attempt to draw a causal connection between the Deceased's perceived poor hygiene and the Accused's children's various illnesses, which in turn resulted in the Accused "careen[ing] out of control".⁷² In the further plea, the Accused claimed

⁷¹ PBD at pp 50, 73, 107 and 108.

⁷² Further Plea in Mitigation at [12]-[14].

that the doctor had told her that her children's illnesses were due to poor hygiene.⁷³ However, this was not documented in any of the KK Women and Children's Hospital medical reports on the children's hospital admissions. Moreover, the medical reports covered periods where the elder child was diagnosed with hand, foot and mouth disease *before* the Deceased commenced working in the household on 28 May 2015. On the face of the reports, the Accused's children's various documented medical conditions *after* 28 May 2015 (namely knee pains, pneumonia and otitis media (ear infection) and viral infection)⁷⁴ did not appear to have any clear connection to the Deceased's perceived poor hygiene standards.

67 Additionally, the Accused suggested in the further plea that she regretted that the Deceased "had been unable to reach out for help as [she] too [*ie*, like the Accused] would not have been able to articulate the abusive situation she had been subjected to".⁷⁵ The cruel irony in this statement was indicative of her lack of genuine remorse. As the Prosecution rightly noted, the Deceased was never given any opportunity to seek help. The Deceased had no handphone or days off. She had no apparent means of contacting anyone for help. She was restrained by being tied up at night by the Accused. When the Accused last brought her for a medical check-up at the GP clinic on 23 May 2016, she took steps to ensure that the Deceased did not raise any complaints to the GP. The Accused was the one who answered all the GP's questions relating to the Deceased's physical condition and appearance.⁷⁶

⁷³ Further Plea in Mitigation at [12].

⁷⁴ Further Plea in Mitigation at [9]-[10].

⁷⁵ Further Plea in Mitigation at [18].

⁷⁶ Statement of Facts at [12(d)].

68 To sum up, I was not persuaded by the Accused’s attempts to demonstrate her remorse. Rather, her efforts to downplay her culpability suggested that she remained unprepared to take responsibility for her actions but continued to blame the Deceased for having provoked her instead.

69 In my view, this was undoubtedly among the worst cases of culpable homicide imaginable, and it would arguably not be wrong to describe the present case as “worse” and more heinous than *Lim Ghim Peow*. After all, the Accused had been charged with 114 charges in addition to the s 304(a) charge, in relation to offences committed over 35 days (from June 2016 onwards). These 114 offences would only represent a fragment of the full extent of physical abuse inflicted on the Deceased since at least October 2015. The Deceased was subjected to incessant abuse as well as tremendous pain and suffering for a prolonged period.

70 The central issue to my mind was whether the Accused deserved a sentence of life imprisonment, or whether her psychiatric conditions were sufficient reason for me to consider a sentence of 20 years’ imprisonment or lower in respect of the s 304(a) charge.

71 The Prosecution cited precedents involving culpable homicide not amounting to murder which resulted in a life sentence notwithstanding that the offenders suffered from some psychiatric condition that contributed to their offending.⁷⁷ The Prosecution also acknowledged that those offenders were found to be at risk of reoffending. As the Prosecution very fairly noted, the circumstances in the various precedents did not lend themselves easily to comparison. Comparisons across precedents may not be helpful given that the

⁷⁷ Prosecution’s skeletal submissions at [52].

facts in each case can and do differ widely, and ultimately each case has to be assessed based on its own unique circumstances.

72 I should add that I viewed with caution the Prosecution’s submission that the court’s “righteous anger” should be invoked as a reason to apply the full force of the law in sentencing.⁷⁸ The court should of course not shy away from conveying the strongest disapprobation of offending conduct and expressing outrage on behalf of society in appropriate cases such as this. But emotiveness can impede full and fair consideration of all relevant factors. The sentence of the court is not and indeed should not be based on an overriding visceral sense of indignation.

73 In totality, I accepted that the Accused’s culpability was somewhat attenuated. In Dr Derrick Yeo’s words, her “depressed state, compounded by her [OCPD], would have caused her to have increased irritability and anger”, and these conditions would have “affected her judgment”.⁷⁹ He noted that she thought that she would not face any consequences for her ill-treatment of the Deceased. This last observation was slightly ambiguous, but I understood it to mean that in his assessment, her judgment was affected to the extent that she was reckless or callous with regard to the consequences of her actions. It did not suggest that the Accused did not know that what she was doing was legally or morally wrong.

74 To be clear, it was not Dr Derrick Yeo’s opinion that the Accused’s psychiatric conditions had directly caused her to commit the offences. Nonetheless, the undisputed fact was that her psychiatric conditions had

⁷⁸ Prosecution’s skeletal submissions at [2].

⁷⁹ PBD at p 108.

substantially contributed to the commission of the offences. Crucially, as noted above at [61], Dr Derrick Yeo had opined that she was responsive to psychiatric treatment and was unlikely to reoffend. She was unlikely to pose a serious danger to the public. These were important distinguishing factors that set her case apart from the precedents cited where life imprisonment was imposed. For these reasons primarily, I did not think that life imprisonment would be fair or appropriate.

75 That being said, I did not accept that the mitigating force of her psychiatric conditions was so substantial or compelling as to warrant a sentence of less than 20 years in relation to the s 304(a) charge. Her alleged state of heightened anxiety over her children's medical conditions could not be said to reduce her culpability. As I had explained above at [66], her children's various illnesses had no palpably clear link to any perceived poor hygiene practices on the part of the Deceased. There were also past assaults including the incident with the heated iron forming the subject-matter of the s 325 charge which had nothing to do with the Deceased's standards of hygiene. In any case, the Accused's liberal resort to routine beatings and brutal attacks on the Deceased, some of which were committed in full view of her children, were hardly justifiable means of disciplining the Deceased for any perceived lapses in her work or hygiene standards.

76 While Dr Derrick Yeo had assessed that the Accused's judgment was impaired by her depressed state compounded by her OCPD, he determined that the impact on her judgment lay in her "thinking that she would not face any consequences" for her ill-treatment of the Deceased. Crucially, although Dr Derrick Yeo concluded that her mental responsibility was partially impaired, he assessed her to be able to exercise conscious deliberation and volitional control

throughout the commission of her offences.⁸⁰ In Dr Derrick Yeo’s view, “she had the cognitive and volitional capacity to engage in purposeful, planned actions in choosing methods in which to inflict physical punishment” on the Deceased.⁸¹

77 The cruel and inhumane methods that the Accused had chosen to employ in order to punish the Deceased were conscious and deliberate. They reflected an utter lack of any basic humanity. The Prosecution submitted that the Accused had treated the Deceased as a lesser human being. In my assessment, what the Accused had done to the Deceased demonstrated that she had callously regarded the Deceased as *even less* than a human being. In her final hours, the Deceased was kicked, strangled, pulled by her hair, stomped upon and punched like a punching bag or some inanimate object. In the 35 days leading up to her death, she had endured repeated assaults, including being lifted and dragged by her hair and being spun round like a rag doll by the Accused. This much was incontrovertibly revealed from the CCTV footage alone. The Deceased was defenceless. She was at the total mercy of the Accused. The Accused showed no mercy whatsoever.

78 In this connection, I differed from Dr Derrick Yeo’s opinion that the Accused had treated the Deceased “like a child to be physically disciplined, in order to achieve her goal of good hygiene practices and cleanliness, with the main goal of preventing her children from falling ill due to contamination”.⁸² This may have been his assessment after taking into account the Accused’s self-reported circumstances and motivations. However, the numerous savage and

⁸⁰ PBD at p 108.

⁸¹ PBD at p 108.

⁸² PBD at p 108.

vicious attacks captured on CCTV footage, and in particular where the s 304(a) offence was concerned, did not suggest at all that the Accused had only thought that she was merely disciplining a wilfully disobedient child.

79 By the Accused’s own account, the underlying reasons for her criminal conduct were founded on fact, namely her dissatisfaction with the Deceased’s perceived lapses, spurred by her depression and fixation over hygiene and cleanliness. In line with the Court of Appeal’s observations in *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 at [65], her psychiatric conditions could “only ameliorate to a limited extent the criminal conduct because [her mind was] still rational”. The Court of Appeal went on to hold that in such cases, “deterrence and retribution should still feature because *depression, even if severe, cannot be a licence to kill or harm others*” [emphasis added] (at [65]).

80 The Accused was fully cognisant of her actions and purposeful in her criminal conduct. She intended to inflict untold pain and suffering on the Deceased ostensibly as “punishment” for her perceived shortcomings. In my view, the Court of Appeal’s observation in *Lim Ghim Peow* at [35] were also apposite: the nature of the Accused’s psychiatric conditions was ultimately not such that they affected her capacity to appreciate the gravity and significance of her criminal conduct, even if her judgment may have been affected so as to cause her to think that she could continue abusing the Deceased with impunity and not have to face any consequences. Thus, while her culpability may have been attenuated, it remained high.

81 The Accused further argued that the plight of her young children in being deprived of her maternal care while she is incarcerated should be considered on compassionate grounds in sentencing. It is well-established in

law that personal or family hardship are not mitigating factors unless there are clearly exceptional reasons for taking them into account (see *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]-[12]; *Lim Choon Kang v Public Prosecutor* [1993] 3 SLR(R) 254 at [5]; *Leaw Siat Chong v Public Prosecutor* [2001] 3 SLR(R) 646 at [12]; *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [73]).

82 On the related issue of a gag order raised in the further plea, I was unable to find any justification or legal basis for the gag order she had sought in order to protect her children from stigmatisation. The fact that there was significant media and public interest in this case did not constitute a valid reason for either a gag order or for a lighter sentence. There is no recognised principle in law that calls for a gag order in such circumstances. Equally, it cannot be right that the court's sentencing determination, whether weighing on the side of the Prosecution or that of the Accused, is calibrated according to the intensity of media scrutiny or public interest. These considerations do not dictate how the sentencing court should decide, whether in the case of a crime of grossly shocking proportions or a relatively minor offence.

83 I concluded that retribution and general deterrence were the sentencing principles that took centre stage in the present case. Having balanced the various sentencing considerations and weighed the aggravating and mitigating factors, I found that a sentence of 20 years' imprisonment in respect of the s 304(a) charge was appropriate. It was not manifestly excessive but was proportionate to the Accused's offence, and it accorded due consideration to her mental disorders which had substantially contributed to her commission of the offences.

The appropriate sentences for the remaining charges

84 As a starting point in addressing the sentences for the remaining charges, I kept in mind the principles laid down by Sundaresh Menon CJ in *Mohammad Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (“*Shouffee*”). The one transaction rule was completely inapplicable as this was not a case involving a single or isolated invasion of the same legally protected interest. It would not make sense to consider that the various offences might somehow be said to have been unified by the same purpose or design. Even though the Deceased was the sole victim, each offence was separate and distinct in character and in terms of the time of commission.

85 For the 22 charges under s 323 read with s 73(2), and s 323 read with s 73(2) and either s 34 or s 109, they involved varying degrees of harm and culpability. It would not be wholly appropriate to impose the same sentence for each and every charge. Having regard to the framework I had set out in *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 (“*Tay Wee Kiat*”) at [70]–[75] in relation to sentencing cases of domestic maid abuse, it was plain that the Accused’s sustained pattern of offending was systematically abusive and oppressive. I had no doubt that the appropriate sentences would fall within the higher end of the sentencing spectrum.

86 I imposed sentences pegged at between 18 months’ and two years’ imprisonment, depending on the extent and duration of the hurt involved in the respective charges, bearing in mind both the physical harm and the significant psychological harm that was indubitably inflicted on the Deceased (*Tay Wee Kiat* at [71]–[72]). The specific sentences are as follows:

S/No	Charge Number	Sentence
1	DAC-902727-2018	18 months
2	DAC-902744-2018	Two years
3	DAC-902749-2018	Two years
4	DAC-902763-2018	18 months
5	DAC-902768-2018	18 months
6	DAC-902771-2018	Two years
7	DAC-902775-2018	Two years
8	DAC-902776-2018	Two years
9	DAC-902777-2018	Two years
10	DAC-902780-2018	Two years
11	DAC-902787-2018	Two years
12	DAC-902791-2018	Two years
13	DAC-902797-2018	Two years
14	DAC-902802-2018	Two years
15	DAC-902805-2018	Two years
16	DAC-902807-2018	Two years
17	DAC-902808-2018	Two years
18	DAC-902810-2018	Two years
19	DAC-902811-2018	Two years
20	DAC-902813-2018	Two years
21	DAC-902815-2018	Two years

22	DAC-902821-2018	Two years
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87 For the s 324 read with s 73(2) charge (DAC-902753-2018), I agreed with the Prosecution that a sentence of three years was warranted, having considered the applicable aggravating factors to domestic maid abuse cases set out in *ADF* at [91] and *Tay Wee Kiat* at [73]. For the s 352, s 341 and s 506 charges (DAC-902724-2018, DAC-902830-2018 and DAC-902770-2018), I agreed with the Prosecution that a sentence of one month's, one month's and three months' imprisonment for each of these respective charges was warranted.

88 Where the s 325 charge (DAC-902842-2018) was concerned, the Prosecution submitted for at least three years' imprisonment. The only related sentencing precedent involving an employer effectively starving a foreign domestic worker appears to be *Public Prosecutor v Lim Choon Hong and another* [2017] 5 SLR 989. However, that case involved prosecution for a far less serious offence under s 22(1)(a) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("EFMA") read with reg 4(2) of the Employment of Foreign Manpower (Work Passes) Regulations 2012 (S 569/2012), punishable under s 22(1)(i) of the EFMA which carries a maximum imprisonment term of only 12 months. As the maximum permissible imprisonment term for the present s 325 offence is 15 years, with the added element of endangering life, I was of the view that a sentence of three years' imprisonment was amply justified.

Consecutive sentences and the totality principle

89 I considered that the general rule enunciated by Menon CJ in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [41] and [48] was broadly applicable in the present case. The Accused was a multiple

offender who ought to be separately punished for each offence, but bearing in mind the totality principle, it would be entirely out of the question to order the individual sentences for all or even a substantial number of the 28 proceeded charges to run consecutively. This would lead to a crushing and wholly disproportionate sentence by any standard. It would violate the general rule against double counting aggravating factors given that multiple offences were involved. These factors would already have been taken into account at the first stage of the sentencing process in dealing with the appropriate individual sentences: see *ADF* at [92] and *Shouffee* at [79].

90 As such, at the second and third stage of the sentencing analysis set out by Menon CJ in *Raveen* at [98], I determined that at least five sentences ought to run consecutively in view of the Accused's overall criminality. I concluded thus after having given careful and deliberative thought in relation to the relevant sentencing considerations, including the Accused's psychiatric conditions. I therefore ordered the sentences in respect of five charges to run consecutively, namely those for the: s 304(a) charge (HC 900118/2016: 20 years' imprisonment), s 324 charge (DAC-902753-2018: three years' imprisonment), s 325 charge (DAC-902842-2018: three years' imprisonment) and two s 323 charges (DAC-902815-2018 and 902821-2018: two years' imprisonment each). The aggregate sentence was 30 years' imprisonment.

91 With the sentence backdated to the Accused's date of arrest on 26 July 2016, subject to remission, she would effectively be incarcerated for another 15 years or so. By that time, she would be in her mid-50's.

Conclusion

92 The extremely aggravated and horrific circumstances of the offences which culminated in the untimely passing of the Deceased were crucial

considerations that tipped the scales towards retribution and deterrence. General rather than specific deterrence was of particular concern. At the same time, the sentencing court must not ignore the circumstances of an offender who has relevant and significant psychiatric conditions.

93 Notwithstanding the Accused’s psychiatric conditions, she was cognisant of her actions and purposeful in her conduct. She did not lack capacity to comprehend what she was doing. To recapitulate, the 115 charges spanned only the final 35 days of the Deceased’s life. From the Statement of Facts and the accompanying CCTV footage, it was clear beyond peradventure that the Accused had waged a brutally dehumanising campaign of violence against the Deceased. She relentlessly inflicted pain and suffering on the Deceased as “punishment” for her perceived lapses. The Accused did so without compunction until she caused the death of the Deceased.

94 The overall picture before me led me to conclude that an extended custodial sentence had to be imposed. The sentence had to signal clearly societal outrage and abhorrence of these offences. Though I was not persuaded that the Accused was deserving of life imprisonment for the s 304(a) charge, an extended sentence would neither be crushing nor disproportionate in light of the gravity of the offences.

95 For the above reasons, I ordered that the sentences in respect of five charges to run consecutively, as stated at [90] above. The aggregate sentence was therefore 30 years’ imprisonment.

96 The sentence was backdated to 26 July 2016, the date of the Accused's arrest.

See Kee Oon
Judge of High Court

Mohamed Faizal SC, Senthilkumaran Sabapathy and Stephanie Koh
(Attorney-General's Chambers) for the Prosecution;
Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for
the Accused (up to 30 March 2021);
Joseph Chen (Joseph Chen & Co) for the Accused (wef 30 March
2021).
