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

[2021] SGHC 251

Criminal Case No 35 of 2021

Between

Public Prosecutor

And

Shoo Ah San

EX TEMPORE JUDGMENT

[Criminal Law] — [Offences] — [Attempt to murder]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

TABLE OF CONTENTS

Public Prosecutor
v
Shoo Ah San

[2021] SGHC 251

General Division of the High Court — Criminal Case No 35 of 2021
Aedit Abdullah J
2 November 2021

5 November 2021 Judgment reserved.

Aedit Abdullah J:

1 This is my decision in respect of the sentencing of the accused on his plea of guilt to a charge of attempted murder of his daughter. I will give my brief remarks to outline the main reasons for my decision, but will add to these in full grounds if there is an appeal.

2 Having considered the charge proceeded with, the charge taken into consideration, the statement of facts and the submissions of the parties, as well as the other papers before me, I have determined that despite the best efforts of defence counsel, the accused should be sentenced to a total of 15 years' imprisonment.

Brief background

3 The accused, a Malaysian citizen who is estranged from his children, was in a dispute with his daughter and son as regards property in Malaysia. His

unhappiness reached the point that he travelled to Singapore from Malacca in Malaysia, to look for his daughter in particular. The accused thought of killing his daughter, whom he regarded as the architect of his troubles, and then kill himself thereafter. The accused came to Singapore on 17 January 2020, and waited in the vicinity of Marsiling Lane, as he did not know the daughter's address. Aside from his desire to kill her, the accused wanted to talk to his daughter about the ownership of the house. At about 5.03 am, the accused saw his daughter walking towards a bus stop, shouted at her, and thinking that she had ignored him, attacked her. He aimed at her neck, wanting to kill her, but this strike was warded off by the daughter. However, he stabbed her on the shoulder, upper chest, shoulder blade and back, with a 10 cm serrated knife that he had brought along from Malaysia. He then fled, while the daughter called for help. A passer-by encountered the daughter at a grass verge and called for an ambulance. The accused, who was riding off initially, saw the daughter with the passer-by, got off his bike, rushed towards the daughter, shouted at her, and then attacked the daughter again, stabbing her chest, upper arm and abdomen. The passer-by shouted for him to stop, but he only stopped when blood flowed from her mouth. He then left on his motorcycle.

4 After the attack on the daughter, the accused tried to look for his son, but could not find him. Subsequently, 5 days after the attack on the daughter, the accused was arrested in Kaki Bukit near the son's workplace.

5 The accused admitted to the offence of attempted murder, under s 307(1)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed), by stabbing the daughter on her chest, abdomen, back, shoulder and arm. The accused stabbed the daughter with such intention and under such circumstances that if he had caused the death of the daughter by his acts, he would be guilty of murder, and by these acts, he had caused hurt to the daughter.

6 A charge of possession of the serrated knife contrary to s 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 2013 Rev Ed) is taken into consideration for the purposes of sentencing.

The statutory provision

7 Section 307(1) of the Penal Code reads:

> Whoever does any act with the intention of causing death and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be punished with –
>
> (a) imprisonment for life and shall also be liable to caning; or
>
> (b) imprisonment for a term which may extend to 20 years, and shall also be liable to fine, or caning or to both.

8 The charge against the accused is under s 307(1)(*b*), which means that the sentence is imprisonment up to 20 years, and fine or caning or both.

The relevant sentencing factors

9 As noted by the parties, no sentencing framework has been laid down for cases under s 307 of the Penal Code. The relevant sentencing factors are considered through the rubric of the harm caused by the offence and culpability of the accused, taking into account matters that are mitigatory and aggravating.

10 The three primary sentencing objectives of rehabilitation, deterrence, and retribution, will guide the calibration of the sentence. No element of rehabilitation operates in the present case. What is called for is the deterrence of similar acts to ensure the safety of all. A sufficiently strong signal should be sent that such acts of wanton violence have no place anywhere, and certainly not in public spaces. But while general deterrence is engaged, I saw nothing in

the present case that called for any consideration of specific deterrence. It is not likely at all to my mind that the accused would continue to pose a threat to his children: there was no evidence at all of this sort. The other significant consideration in play is retribution, namely, that the accused should be punished in a commensurate manner for the harm caused and his culpability.

Harm

11 I am of the view that substantial and grave harm was caused through the injuries and the location of the attacks.

The injuries caused

12 The injuries caused to the victim were substantial, including collapsed lungs, the abnormal presence of air in the chest, and possible blood in the heart sac, on top of the 17 stab wounds she suffered, all over the upper body of the victim. One of these wounds was as long as 4 cm and went deep into the muscle. The potential for death was not far given the air in her chest and blood in her heart sac. He had also aimed at her neck as well. The victim had to undergo emergency surgery and follow-up surgery. Physiotherapy was needed to rehabilitate her condition. It was fortunate that nothing permanently debilitating followed. In a victim impact statement recorded about 10 months after the incident, she noted that her injuries had healed, and did not have any physical problems in her daily life, but she still remained scared when leaving for the bus-stop, and would not sit down, in case she had to run if anything happened. She also tried to avoid walking near where the second attack occurred. It is clear that the criminal harm caused to the victim was substantial, which must attract a heavy sentence.

The location of the attacks

13 The attacks having occurred along the street, in the morning, caused harm to the public peace and it is readily inferable that attacks of this nature would cause disquiet and fear as the brazenness of the attacks occurring in such a setting unsettles the expectation of security, peace and obedience to law that any citizen should expect. All our citizens are entitled to expect to walk our streets in peace, at any time of day or night. While not downplaying attacks in other contexts, that interest has to be protected by a heavy measure of deterrence to drive home the message to those who might otherwise allow their passions or unhappiness about a dispute to get the better of them and attempt murder or violence on our streets or other public spaces. Those who in fact breach the peace and security, and attempt to kill in the open can only expect to be dealt with severely. Furthermore, as submitted by the prosecution, the presence of the passer-by did not at all deter him. The brazenness of an attack in front of others elevated the need for a punitive sentence to be imposed.

Culpability

14 The degree of culpability or criminal responsibility was very high, as shown through the accused's viciousness in attacking not once but twice. However, other factors relied upon by the prosecution did not operate.

Viciousness of the attacks

15 As submitted by the prosecution, the attacks were vicious. The victim was attacked not once but twice. The accused had gone away after the first attack but returned to renew the attack in the presence and full view of the passer-by. He only stopped when the victim had blood in her mouth, ignoring the plea by the passer-by to stop. The accused thus displayed such viciousness

in the attack. His blameworthiness was deepened by the ferocity with which he harmed the victim, his disregard for the law and his disregard for the presence of others. Such conduct could only attract heavy punishment.

Premeditation

16 The prosecution relied on premeditation being made out, contending that the accused had planned to kill months before the attack, and carefully considered how to launch the attack, and aimed to commit suicide after. He had brought a knife with him across into Singapore, which the prosecution says was small enough to avoid drawing public attention, but sufficient to injure vital organs. The defence however argued that he had the knife with him as a handyman, and that he had wanted to talk to her first.

17 I note that this difference led to the matter being set down for a *Newton* hearing, but I had indicated to the parties that I did not think this difference would be material in sentencing in the present case. I do note that the Statement of Facts, as admitted by the accused, indicated to my mind that the intention to kill was not totally formed until the point of the first attack, as it referred to the accused also wanting to talk to the daughter about the house.

18 In any event, care has to be taken, as I have mentioned on other occasions, in invoking premeditation as a factor. In so far as it is used in contra-distinction only to a spontaneous or instantaneous intent, formed on the spot in reaction to some occurrence, it does not engage necessarily any sentencing response. There is no need to differentiate a spontaneous act as opposed to one that has been in rumination: people may think evil thoughts. What matters really for sentencing is going beyond mere rumination, involving some aspect of planning, to facilitate or to lay the groundwork for the commission of the act.

The response here would be retributive or punitive in nature, as the culpability of an offender who plans or plots is clearly higher.

19 In the present case, I am doubtful that what is alleged to be premeditation was of the sort to attract a substantial uplift in sentence. While the accused did indeed bring the knife used all the way from Malacca into Singapore, any planning involved would not have been so substantial or with such sophistication that it should operate in material way as a factor in sentencing.

20 In respect of premeditation, the prosecution cited *PP v Law Aik Meng* [2007] 2 SLR(R) 814 for the general proposition that specific deterrence is required where a crime is premeditated: at para [22]. The rationale is that deterrence is relevant where there is a conscious decision to commit the offence, as opposed to spontaneous acts which may not be capable of being deterred. I am doubtful that specific deterrence is actually a significant factor in the present case, simply because it is highly unlikely given the other sentencing factors, pointing to a substantial sentence, that the accused, who is already 65 years old, will be in much of a condition to commit a similar offence in future even when released from prison, or even allowed to remain in Singapore.

Abuse of trust

21 The prosecution also referred to abuse of trust, but it is hard to see how there could have been any such abuse here. The victim was estranged from the accused, and they had no contact at all. In addition, the prosecution also cited *PP v Luan Yuanxin* [2002] 1 SLR(R) 613 for the proposition that crimes of violence are particularly heinous if committed in a domestic setting; that case, however, was concerned with an attack in the home, where one would expect security and safety. It does not seem to stand for the proposition that that an

attack by one family member on another such as by a father against a daughter, is an aggravating factor in sentencing in its own right because of the familial relationship. What might matter is whether the attack occurred because of the exploitation of some vulnerability by the attacker, including a familial relationship, but again, that could not have been the case here given the absence of any ongoing relationship between the accused and the victim.

Lack of basis for motivation for the attack

22 Another point raised by the prosecution was that the accused's motivation for the attack was unfounded. I could not however accept this as a relevant factor going to increased culpability here. If the accused had an excuse justifying the attack, such as a possible defence under the Penal Code, that would have answered the charge. Any other kind of an excuse or motivation would be largely immaterial given the severity of the attack.

Mitigation

23 There was not much that could be said in mitigation, save for the plea of guilt, the effect of which would be reduced in the circumstances here.

Plea of guilt

24 A plea of guilt, indicating genuine remorse, saving time and resources, and sparing the testimony of witnesses, especially those of victims in cases of assault or violence, should be credited with some discount in the sentence imposed. The general rule of thumb is that pleading guilty would attract a reduction of a third-off the sentence that would be imposed on conviction after a trial. But this reduction is not immutable: as noted in the authorities cited, the

effect of a plea of guilt is lessened when the offender is caught red handed, and there is really not much of a saving of time and resources from a trial.

25 In the present case, given the viciousness of the attack and that it was in the open, the need for a strong signal of deterrence and retribution should be given more weight than the plea of guilt. While some discount in sentence should be given, this need not extend to the usual one-third. On the other side of the coin, though, I do not think that any part of the discount due for the plea of guilt should be reduced because of his earlier qualification or the issues taken up as regards the Statement of Facts.

Age

26 The fact that the accused is 65 years old did not mean that the sentence imposed should not be substantial. The defence argues for the age to be taken into account. As I understand defence counsel's primary argument, it is not that an advanced age should attract leniency on its own, but that it may show a lengthy clean record. While the defence cited *Yap Ah Lai v PP* [2014] 3 SLR 180 for the proposition that a clean record should merit some leniency, this has to be weighed against the seriousness of the offence charged. The relevance of a long clean record before an attack that could have led to death is of little weight.

27 The defence did also argue, citing *PP v UI* [2008] 4 SLR(R) 500 ("*UI*"), that where a long sentence amounts to a life sentence, a reduction should be given, unless a life sentence is warranted.

28 I reiterate my observations in *PP v Yue Roger Jr* [2019] 3 SLR 749, that while the imposition of effective life sentences on older offenders should generally be avoided, this was not an absolute rule, and could be displaced for

heinous offences. Where a heinous offence is committed, then a long sentence should still be imposed even if it meant the offender would spend the rest of his life in prison: para [122] and [123]. The Court of Appeal in *Yue Roger Jr v PP* [2019] 1 SLR 829 agreed with the total sentence of 25 years' imprisonment imposed and did not disturb it. The Court did not have occasion to consider the portion of the judgment in *UI* relied upon by the defence here. Given that the sentence was not disturbed however, I am of the view that the approach I adopted is not in error, and I apply here it as well. I also note that it would seem that similar positions have been taken in other cases. As stated by the Court of Appeal in *Ewe Pang Kooi v PP* [2020] 1 SLR 757, there are limits to the principle that a sentencing court should be mindful of the real effect of a sentence on an offender of advanced age: para [10]. Thus, the age of the accused here could not lead to a reduction in sentence given the heinousness of his crime, as evinced in the viciousness of the attack, the injuries caused and the occurrence in a public place.

Aggravation

29 The charge taken into consideration would require some consideration whether the sentence imposed should be increased. Here, given the relatively lengthy sentence that may be imposed for the proceeded charge in any event, the effect of the charge taken into consideration was at the end of the day overshadowed.

Sentencing precedents

30 As no sentencing framework has been laid down, sentencing precedents were relied upon. Consistency in sentencing aims to achieve fairness by treating like cases alike. But factual differences must be taken into account, and consistency for consistency's sake alone is as unjust as arbitrary variation.

31 The parties both referred to the same cases, both involving sentencing after trial.

32 In *PP v Ravindran Annamalai* [2013] SGHC 77 ("*Ravindran*"), a sentence of 12 years' imprisonment and 6 strokes of the cane was imposed for an attempted murder charge through strangulation by hand and with the use of a raffia string. The accused was also convicted and sentenced for a number of other charges including two counts of rape with hurt, causing hurt and house trespass. The attack took place in a flat. The court found that the offender had brought the raffia string with him, and used it to strangle her, causing oxygen deprivation leading to urinary incontinence. The offender intended to kill the victim to prevent her from identifying him.

33 The prosecution argues here that there is no evidence of premeditation and there was non-permanent injury in that case. The defence, for its part, argues that the present accused is less culpable, as the offender in *Ravindran* intended to cover up his crimes. The defence also emphasises that that case involved sentencing after trial.

34 To my mind, *Ravindran* involved a less vicious attack than the present case. While the sentence of 12 years' imprisonment was imposed after trial, the facts of the present case are sufficiently different that a higher sentence would be warranted despite the plea of guilt.

35 Turning then to *PP v BPK* [2018] 5 SLR 755 ("*BPK*"), in that case, the offender was convicted of attempted murder after trial; he had stabbed the female victim in the back when he met her, and continued to assault her after she had fallen to the ground. The attack took place in the morning at a void deck of a HDB block. The court in sentencing the offender there to 14 years'

imprisonment and 6 strokes of the cane, took into account the extent of injuries, the preparatory steps taken, the causing of public disquiet, and the absence of any mitigating factor. The injuries caused were various wounds on the head and neck, chest and abdomen, and the upper and lower limbs. The bleeding caused could have led to death. While the victim was not permanently incapacitated, she was left with permanent scars. The Court also took into account that the offender had the intention to kill at the material time, and that the offender had planned to assault the victim, taking along the knife used in the attack, hiding it on his person. The Court noted that he had at least planned to injure when doing so. No appeal appears to have been filed or pursued.

36 It is noteworthy that a sentencing framework was proposed in *BPK* by the prosecution, but was not adopted by the Judge in that case as he did not consider it desirable to do so. That framework came up to at least 14 years' imprisonment for severe harm with high culpability.

37 The prosecution here argued that the level of culpability could not be lower than that of the offender in BPK as the degree of premeditation was higher as he had entered into Singapore for the purpose of killing the daughter. The defence here took note that the attack in *BPK* was more egregious, and much public disquiet was caused, with 15 first information reports being lodged, indicating great alarm.

38 As noted above, I do not think the premeditation here was substantial, if at all, and whether the knife was obtained from a kitchen in Singapore or a tool box in Malaysia could not add very much to the determination. There is also nothing in the statement of facts to indicate any elaborate effort was made to bring the knife across the causeway.

39 I could not therefore accept the prosecution's attempt to distinguish *BPK*. Rather the difficulty with *BPK* is that given the factors in play, the sentence imposed after trial there was perhaps, with respect, too low. I therefore decline to follow it. Although it is not apparent why the prosecution submitted for a floor of only 14 years' imprisonment and 6 strokes of the cane, and included that imprisonment term in its proposed framework, that submission would have constrained the court's determination.

40 In general, consistency in sentencing is to be aimed for. Like cases should be considered alike, and treated similarly, but that is only on the basis that the facts are similar and that the sentences in the earlier cases were appropriate. I am of the view, with respect, that the decision in *BPK* did not give sufficient weight to the ferocity and viciousness of the attack, and the public disquiet caused, among other things, and that the matter had proceeded to trial. To my mind, a sentence higher than 14 years' imprisonment with 6 strokes ought to have been sought and imposed.

41 The defence referred to the case of *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1 ("*Udom*") for the proposition that in the circumstances in the present case, a sentence significantly lower than the maximum of 20 years should be imposed. The offender in *Udom* had bludgeoned the deceased with a 7 to 8 kg metal rod. He was convicted by the Court of Appeal of attempted murder as it was not shown beyond reasonable doubt that the offender had caused the death.

42 Aside from anything else, *Udom* is of very little assistance, given that it was imposed under the sentencing regime in respect of s 307 of the Penal Code (Cap 224, 1985 Rev Ed), with 10 years' imprisonment as the maximum sentence.

Calibration of sentence

43 Taking into account the various factors above, and the sentencing considerations, I am of the view that a term of 15 years' imprisonment should be imposed. The prosecution argued for 20 years' imprisonment before mitigation; in oral arguments, the prosecution clarified that the range after mitigation should be between 16 to 18 years' imprisonment. The defence submits for 10 years' imprisonment.

44 I am of the view that the sentence should be closer to the upper end of the range, notwithstanding the plea of guilt, especially because of:

(a) the number and nature of injuries caused;

(b) the brazenness by the attacks occurring in a public place, and during the second attack, in front of a passer-by; and

(c) the viciousness, shown in two attacks being launched on the victim.

45 Bearing these and the other factors in mind, and taking care not to double-count, I am of the view that the harm and culpability present here call for a sentence of 17 years' imprisonment. This calibration departs from the decision in *BPK* for the reasons given above. To my mind, this is close to the upper limit in the majority of plea of guilt cases: in general, one would expect cases closer to the maximum sentence to be those after trial.

46 Any mitigation through the plea of guilt is of lesser effect in this case simply because of the viciousness of these three factors, and I do not think it should extend to anything close to one-third off. I do calibrate the sentence imposed, taking the plea of guilt here into account, to 15 years' imprisonment.

47 As no further uplift in lieu of caning is sought by the prosecution because of his age and length of sentence sought, I do not in the circumstances impose any such uplift.

Conclusion

48 The sentence of 15 years' imprisonment is thus imposed. Its commencement date will be specified shortly.

49 In closing, I should mention once more my gratitude for the assistance of counsel on both sides. But in particular, I commend Mr Lau and Ms Lin, and all who worked with them, for representing and assisting the accused. While I have not been persuaded by the defence arguments seeking a lower sentence for the accused, I appreciate the work that has been done *pro bono* and that they have put forward the best case possible in the circumstances for the accused. I hope if the accused requires their further assistance, they will be able to continue. Their law firm is also to be commended for providing all necessary support for their work for the accused. I hope other younger lawyers in the same position will be encouraged to do similar work, and I trust other law firms will also provide similar necessary assistance.

Aedit Abdullah
Judge of the High Court

Hay Hung Chun and Zhou Yang (Attorney-General's Chambers) for the prosecution;
Victor David Lau Dek Kai and Lin QingXun (Drew & Napier LLC) for the accused.