IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 135

Criminal Case No 10 of 2017

Between

Public Prosecutor

And

BPK

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Attempted murder]

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v
BPK

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23, 30 April 2018

4 June 2018

Woo Bih Li J:

Introduction

1 On 14 February 2018, the Accused was convicted of the Charge which was framed under s 307(1) of the PC for attempted murder causing hurt:

> YOU ARE CHARGED …
>
> That you …
>
> on the 20th day of December 2013, at about 8.30 a.m., at the void deck of [the Block], did inflict multiple stab and slash wounds to [the Victim] on her head, neck, chest, abdomen, back and arms with a knife measuring about 33 cm, with such intention and under such circumstances that, if by that act you had caused the death of the [Victim], you would have been guilty of murder, and by such act you did cause hurt to the [Victim], and you have thereby committed an offence punishable under Section 307(1) of the Penal Code (Chapter 224, 2008 Revised Edition).

2 The background to the offence has been set out in detail in *Public Prosecutor v BPK* [2018] SGHC 34 ("the Judgment") and I will not repeat it here. There, issues relating to the Accused's capacity to form *mens rea* at the material time, his factual intention at that time, and the partial defence of provocation have also been discussed. For reasons stated in the Judgment, I found that the Prosecution had proven the Charge beyond a reasonable doubt and that the partial defence of provocation was not made out.

3 On 30 April 2018, having heard the parties' submissions, I sentenced the Accused to 14 years' imprisonment and six strokes of the cane. The term of imprisonment was backdated to 21 December 2013. These are my grounds of decision. For ease of reference, I adopt the abbreviations used in the Judgment.

Submissions on sentence

4 The Prosecution urged the Court to impose a sentence of at least 14 years' imprisonment and six strokes of the cane, based on the following:

(a) The paramount sentencing considerations in this case were deterrence, both general and specific, as well as retribution.[1] In particular, general deterrence was needed for offences such as the present which was committed in anger and out of vengeance.[2]

(b) There were several aggravating factors including that:

(i) the offence was premeditated;[3]

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1 Prosecution's Submissions at para 8.

2 Prosecution's Further Submissions at paras 11–14.

3 Prosecution's Submissions at paras 19–20.

(ii) the offence was committed in a public place and caused public disquiet;[4]

(iii) the assault was particularly vicious and violent;[5] and

(iv) the assault had long term implications on the Victim's well-being.[6]

(c) As a matter of precedent, the present case warranted a heavier sentence than that imposed in *Public Prosecutor v Ravindran Annamalai* [2013] SGHC 77 ("*Ravindran*"),[7] which was to date the only case under s 307(1) of the PC since the amendment of the provision in 2007. In this regard, cases under s 304(*a*) of the PC for culpable homicide not amounting to murder were not appropriate precedents.[8]

(d) The sentence urged was justifiable based on the Prosecution's proposed sentencing framework for attempted murder.[9]

5 The Defence submitted that the appropriate sentence was no more than eight years' imprisonment[10] with no caning, or alternatively, not more than two strokes of the cane.[11] The following main arguments were made:

(a) Deterrence, whether general or specific, did not have a role in the present case. Retribution had been met by the fact, amongst other

4 Prosecution's Submissions at paras 21–23.

5 Prosecution's Submissions at paras 24–30.

6 Prosecution's Submissions at paras 31–33.

7 Prosecution's Submissions at paras 40–51.

8 Prosecution's Submissions at paras 52–55.

9 Prosecution's Further Submissions at paras 23–30.

10 Defence's Submissions at para 2.

11 Defence's Further Submissions at para 12.

things, that the Accused was going to "pay[] very heavily for the sin he was drawn into".[12] Mercy should therefore be shown to him.

(b) The following factors should be taken into account:

(i) The assault arose in the context of a relationship between the Accused and the Victim where the Victim was "essentially having fun at [the Accused's] emotional expense".[13]

(ii) The location of the offence was fortuitous, and there was no evidence of public alarm or threat to public safety.[14]

(iii) The Accused was remorseful,[15] had no antecedents, and was of good character.[16]

(iv) A long custodial term would cause hardship to the Accused's parents.[17]

(v) The likelihood that the Accused would be repatriated upon his release from prison was itself punishment for him.[18]

(c) As for the precedents, the Defence relied on *Public Prosecutor v Seng Inn Thye* [2003] SGHC 88 ("*Seng Inn Thye*") which it argued remained relevant even though this was decided before the 2007 amendments to s 307 of the PC.[19] It further argued that *Ravindran*, which

12 Defence's Submissions at paras 30–32.

13 Defence's Submissions at paras 15–18.

14 Defence's Submissions at para 28.

15 Defence's Submissions at paras 19–24.

16 Defence's Submissions at para 13.

17 Defence's Submissions at para 25.

18 Defence's Submissions at para 29.

19 Defence's Submissions at para 34.

was the precedent cited by the Prosecution, was factually distinguishable from the present case.[20]

My decision

6 Section 307(1) of the PC provides for the offence of attempted murder:

> **Attempt to murder**
>
> **307.**—(1) Whoever does any act with such intention or knowledge 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 liable either to imprisonment for life, or to imprisonment for a term which may extend to 20 years, and shall also be liable to caning or fine or both.
>
> *Illustrations*
>
> (*a*) *A* shoots at *Z* with intention to kill him, under such circumstances that, if death ensued, *A* would be guilty of murder. *A* is liable to punishment under this section.
>
> (*b*) *A*, with intention of causing the death of a child of tender years, throws the child into a river. *A* has committed the offence defined by this section, although the death of the child does not ensue.
>
> (*c*) *A*, intending to murder *Z*, buys a gun and loads it. *A* has not yet committed the offence. *A* fires the gun at *Z*. He has committed the offence defined in this section; and if by such firing he wounds *Z*, he is liable to the punishment provided by the latter part of this section.
>
> (*d*) *A*, intending to murder *Z* by poison, purchases poison and mixes the same with food which remains in *A*'s keeping; *A* has not yet committed the offence defined in this section. *A* places the food on *Z*'s table or delivers it to *Z*'s servants to place it on *Z*'s table. *A* has committed the offence defined in this section.

7 As I observed in the Judgment at [322], s 307(1) of the PC has two limbs. The first limb provides that for attempted murder *simpliciter*, the accused "shall

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[20] Defence's Submissions at paras 35–36.

be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine". The second limb provides that for attempted murder causing hurt, the accused "shall be liable to either imprisonment for life, or to imprisonment for a term which may extend to 20 years, and shall also be liable to caning or fine or both". In the present case, the Charge was brought and the Accused was convicted under the second limb of s 307(1) of the PC.

Sentencing considerations

8 In my judgment, the paramount sentencing considerations in the present case were general deterrence and retribution.

9 Specific deterrence was not totally irrelevant. The Prosecution submitted that an enhanced sentence accounting for specific deterrence was necessary for the following reasons:[21]

(a) It is necessary to remind the Accused that using violence out of anger and for vengeance would not be condoned.

(b) The Accused had admitted at several instances in his police statements that he had wanted to kill the Victim.

(c) The Accused's belief that the Victim owed him fidelity "expose[d] his perverse sense of entitlement".

10 I agreed that the first reason was a factor to be taken into account. While it was true that the Accused's strong feelings had arisen out of his romantic relationship with the Victim, this was not to say that he would never have another romantic relationship or be in a situation where his strong emotions may

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21 Prosecution's Submissions at para 15.

again be stirred. That said, insofar as the Accused was not a local citizen or permanent resident, he would likely be repatriated at the end of his sentence, and this militated against giving paramount consideration to specific deterrence (see *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 at [28]). As for the second reason, the Accused's admissions in his statements were evidential points with little, if any, relevance to sentencing. I also did not agree that the Accused by desiring fidelity from the Victim (whether rightly or wrongly) could be characterised as having a "perverse sense of entitlement", or that such entitlement would in itself warrant a sentence for specific deterrence. In the broader context, it was not shown that the Accused was recalcitrant or had a higher propensity for reoffending. Thus, specific deterrence, while relevant, was not a paramount sentencing consideration.

11 General deterrence was necessary to send the important signal that the law would not condone violence as a solution to problems, however personal they may be, and however angry or justified one might feel. The Defence argued that in Singapore it was "not a common phenomenon that someone will murder his or her lover whenever there is love failure".[22] It was not clear that violent crimes arising out of lovers' disputes were as uncommon as assumed by the Defence. In any event, the focus here was on the law's expectation of self-restraint even in moments of grave anger and in relation to disputes of a personal nature, and this reminder was relevant to more than just the Accused. As the Court of Appeal in *Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63 stated (at [61]), "[n]o one is entitled to exact violence in order to seek redress for grievances whether real or imagined."

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22 Defence's Submissions at para 31.

12 Retribution was also important to address the Accused's highly culpable state of mind at the time of the offence, and to vindicate the Victim's interests given the extensive injuries that she suffered as a result of the assault, some of which were life-threatening and/or permanent. The Defence asked for mercy on the basis that the Accused would "pay[] with his future, the dishonourable name that he has earned for his family and the hardship that had befallen on his parents and dependants."[23] I was not persuaded. Retributive justice required that, within the limits of proportionality, the punishment imposed must reflect and befit the gravity of one's crime. None of the factors raised by the Defence was relevant to the Accused's culpability or the harm caused. As for their significance as offender-specific mitigating factors, I will elaborate more on this later (see [31]–[34] below).

Sentencing factors

13 I turn now to explain my consideration of the sentencing factors applicable in this case. In this regard, I will focus first on the offence-specific factors, which relate to the manner and mode in which the offence was committed and which would assist the Court in assessing the twin factors of culpability and harm, before turning to the offender-specific factors, which are personal to the offender and relate to his particular personal circumstances (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [39]; *Logachev Vladislav v Public Prosecutor* [2018] SGHC 12 ("*Logachev*") at [34]–[36]).

Offence-specific factors

14 In relation to the harm caused by the offence, I noted at the outset that the Victim had suffered extensive injuries as a result of the assault, some of

[23] Defence's Submissions at para 32.

which were life-threatening and/or permanent. These injuries were tabulated in the Judgment at [285] as follows:

Region	Injury
Head and neck	• 2cm wound at the right supra-clavicular region • 10cm wound at the right neck • 2.5cm wound at left neck with ear lobe and inferior ear incised • 3cm wound at the chin • 4cm wound at the right base of neck • 3cm wound at left neck trapezium region with a separate 2cm wound parallel and a 2cm wound perpendicular to it
Chest and abdomen	• 3cm wound at the right upper abdomen • 2 separate wounds – 3cm and 1cm at the right upper chest • Wound at the left lumbar L3 region with hematoma • Wound at the right scapular region
Right upper limb	• 3 parallel wounds at the right shoulder (9cm, 3cm, and 5cm) • 3cm wound at the right biceps region
Left upper limb	• 3 parallel wounds at the left shoulder (3cm, 6cm, and 3cm) • 6cm wound at the left posterior deltoid region • 5cm wound at the left biceps region • 2 parallel T-shaped lesions at the left biceps (4cm and 3cm) • 3cm open wound at the left dorsal wrist • 3cm open wound at the dorsum 3rd finger metacarpophalangeal joint

	• 3cm wound at the left hypothenar eminence • Wound at the base of the thumb
Right lower limb	• 2 separate wounds on the right hip (8cm at the right lateral hip and 8cm L-shaped wound at the right hip)

15 In the present case, it was not disputed that there were serious injuries which were life-threatening. As I noted in the Judgment at [303], Dr Thomas Loh, the specialist involved in the management of the wounds on the Victim's head and neck, had testified that without medical intervention in the form of haemostasis and ligation, the Victim would have continued to bleed and eventually gone into a life-threatening haemorrhagic shock.[24] The parties also agreed that, at the very least, the Victim's injuries fell within the definition of grievous hurt under s 320(*h*) of the PC which provides for "any hurt which endangers life, or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits". Fortunately, due to the timely intervention by the doctors, the Victim was saved.

16 Also fortunately, the Victim was not permanently incapacitated. I say this, however, only in an attenuated sense, because while the Victim was able to continue with her job and most other aspects of her life, some of her injuries were permanent. For instance, the assault left multiple scars on the Victim. According to the Victim Impact Statement, this negatively impacted her confidence.[25] In particular, because her occupation required her to tie her hair up, that revealed the scar on her neck to persons who met her and invited probing questions about the traumatising assault.[26] As a result of injuries to her left facial nerve, the Victim also had difficulties smiling, talking, and closing her left eye

24 NE Day 1 (31 January 2017), p 27, lines 8–13.

25 Victim Impact Statement at para 10.

26 NE Day 5 (9 February 2017), p 48, lines 15–20.

properly.[27] Emotionally, the Victim has had difficulties sleeping, flashbacks of the incident, irrational fear, and she no longer felt safe being alone.[28] In my view, it was clear that the assault had long term implications on the Victim's well-being.[29]

17 Further, I should add that while the extent of the injuries caused went primarily towards the indicium of harm, it was also indicative of the Accused's culpability. As Sundaresh Menon CJ explained in *Logachev*, the categorisation of sentencing factors under the rubric of harm and culpability "is simply intended to provide a convenient framework … [n]ot too much should be made of the labels … and the categories may not always be watertight" (at [38]). In this regard, the following passage of the Judgement (at [290]) was relevant:

> Looking at the injuries suffered by the Victim, the Accused had struck repeatedly, relentlessly, and forcefully at several parts of the Victim's body, including her head and neck region which are vulnerable. The Accused initiated his attack against the Victim while she was standing, and continued to strike at her even after she had fallen to the ground. By the Accused's own account, he must have used significant force as he had caused the tip of the knife blade to bend when he missed a strike and the knife hit the floor. Even until the Victim's father came to the Victim's aid at the scene, the Accused was positioned on top of the Victim with a knife and was about to strike at the Victim. According to the father's testimony, the Accused only stopped his assault when the father pushed him, causing him to drop the knife and flee the scene. [internal references and citations omitted]

18 After bearing in mind the need to avoid double-counting a sentencing factor or giving it undue weight, I was of the view that some weight should still be given to the relentless nature of the Accused's attack on the Victim in assessing his culpability.

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27 Victim Impact Statement at para 3.

28 Victim Impact Statement at paras 5–6.

29 Prosecution's Submissions at paras 31–33.

19 As for the other indicia of the Accused's culpability, I was of the view that the primary factor was the finding that the Accused had harboured an intention to kill the Victim at the material time. As I explained in the Judgment at [126], drawing from s 300 of the PC providing for the offence of murder, there were four alternative limbs of *mens rea* under s 307(1) of the PC for attempted murder, which may be summarised as follows:

(a) intention to cause death (s 300(*a*));

(b) intention to cause such bodily injury as the accused knows to be likely to cause the death of the person to whom the harm is caused (s 300(*b*));

(c) intention to cause bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death (s 300(*c*)); and

(d) knowledge that his act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death (s 300(*d*)).

20 The Accused's intention to kill the Victim at the material time of the offence represented the most culpable of the states of *mens rea*. This suggested a high degree of culpability which should be reflected in the sentence imposed.

21 Further, I also considered it aggravating that the Accused had used a deadly weapon and, relatedly, that he had to some extent pre-planned the assault on the Victim. In the Judgment, I held that the Accused did possess the requisite intention to kill the Victim *at the material time of the offence*. In fact, the night

before the offence, the Accused had taken a knife of around 33cm from his kitchen and hidden it in his right sock before subsequently proceeding to look for the Victim at the Block (see the Judgment at [45], [59], [69] and [313]). The Prosecution's submission was that the Accused had gone to the Block "for the sole purpose of killing [the Victim]".[30] On the evidence, it was not clear whether the Accused had formed the intention to *kill* the Victim at the time he took the knife or sometime later before he assaulted her. Even if it was the latter, I was of the view that he had at least formed an intention to *injure* the Victim when he took the knife and hid it. As I explained in the Judgment at [308]–[319], I was not persuaded that the Accused had spontaneously committed the offence upon having sight of an allegedly provocative wallpaper on the Victim's handphone immediately prior to the assault.

22 On that premise, the fact that the Accused had taken preparatory steps to give effect to his intention to *injure* the Victim should be considered an aggravating factor, even though the Charge and conviction were on the basis that he had an intention to *kill* at the material time of the assault. The two states of mind were highly proximate and both involved the use of physical violence against the Victim. Further, the preparatory steps taken evidenced that the Accused had acted with deliberation rather than out of a momentary lapse in judgment.

23 I also considered relevant the fact that the offence had caused public disquiet.[31] The assault took place at the void deck of the Block. In the Judgment, I noted that a total of 15 First Information Reports had been lodged on 20 December 2013 by members of the public in relation to the assault (at [54]). These reports illustrated varying degrees of alarm and distress. For instance, one

30 Prosecution's Submissions at para 45(a).

31 Prosecution's Submissions at paras 21–23.

of the unrelated witnesses stated that he had been sleeping in his room when he heard "a female voice screaming hysterically".[32] The screaming stopped momentarily, and then resumed about ten seconds later. From the window of his flat, the witness could see the Victim lying on the floor of the void deck with "blood all over the upper part of her body", and the Accused sitting on her body and hitting her.[33]

24 The Defence submitted that the location of the offence was "not a usual place of public entertainment".[34] This submission missed the point. It was not the nature or characterisation of the place itself that was aggravating; it was the fact that members of the public had been alarmed and the peace of the neighbourhood had been disturbed. In this regard, Chao Hick Tin JA stated as follows in *Public Prosecutor v Ong Chee Heng* [2017] 5 SLR 876 at [45]:

> In my judgment, the fact that an offence – particularly a violence-related offence – is committed in a public place will be an aggravating factor if it causes *public fear and alarm* (as Rajah J considered in [*Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 ("*Tan Kay Beng*")] at [25]) and/or if it poses a *threat to the health and safety of the public* (as Tay JC found in [*Public Prosecutor v Muhamad Hasik bin Sahar* [2002] 1 SLR(R) 1069]). I agreed with Rajah J's view in *Tan Kay Beng* (at [25]) that the location where the offence in question is committed is often a relevant sentencing consideration but it need not invariably be so. What is required is an assessment of whether, on the facts and circumstances of the case and having regard to the nature of the offence committed, the conduct of the accused had the potential to cause fear and alarm and/or to pose a danger to the public given the particular location at which it occurred. I would also add that the fact that an offender chooses to commit the offence in a public place is a factor that may enhance his culpability in so far as it demonstrates the brazenness of his conduct and his blatant disregard for law and order. [emphasis in original]

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32 AB49.

33 AB49.

34 Defence's Submissions at para 28.

25 I agreed with the view expressed. In the present case, it was true that fortunately no one else was in an immediate danger of bodily harm except perhaps the Victim's father, who was not initially present but later rushed down to the scene upon hearing the Victim's cries for help and pushed the Accused away from her (see Judgment at [42]). However, that did not wholly negate the aggravating aspect of this factor. Indeed, public disquiet was not only a potentiality here; it was a fact supported by the evidence. The Defence's attempt to characterise the unrelated witnesses as "curious onlookers" was an understatement. If it was all indeed pure curiosity, why would there have been 15 reports to the police?

26 In this regard, I also could not accept the Defence's submission that no aggravating weight should attach to this factor because the location was "just fortuitous".[35] As a matter of fact, even though there was no evidence that the Accused had intended to cause public disquiet, it was the Accused himself who had chosen to confront the Victim at the void deck of the Block. This was not a chance encounter or a reverse situation where the Victim had confronted the Accused.

27 As for the offence-specific mitigating factors, I had found in the Judgment at [304]–[321] that there was no provocation from the Victim amounting to the partial defence of grave and sudden provocation within the meaning of Exception 1 to s 300 of the PC. I accepted that there was some relationship between the Accused and the Victim in which it could be said that she had led him on somewhat. This the Victim did not deny and in fact candidly admitted to (see Judgment at [15]). However, even if this could in law be mitigating, I did not consider this to be a mitigating factor on the facts. The

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[35] Defence's Submissions at para 28.

Victim had made it clear to the Accused that she was ending their relationship sometime before the assault on 20 December 2013. Further, I had expressed doubts in the Judgment at [308]–[319] as to whether, immediately prior to the offence, the Accused had in fact taken the Victim's handphone from her hand and seen the allegedly provocative wallpaper of the Victim and another man as he claimed. In this context, I was of the view that no conduct on the part of the Victim and nothing in the nature of their relationship could mitigate the Accused's culpability or the seriousness of the offence.

28 Insofar as the Defence appeared to be suggesting that the "frenzied" attack by the Accused meant that he had acted in a moment of passion which should "ameliorat[e] the harshness of the sentence",[36] I also did not accept this as a mitigating factor. Even taking the Defence's argument at face value, it ran against the Court of Appeal's decision in *Public Prosecutor v BDB* [2018] 1 SLR 127 which held that, as a general rule, the commission of an offence out of anger or strong emotions is not mitigating as the law expects one to be in control of his emotions and conduct even in moments of grave anger.

29 In the circumstances, I considered that there were the following offence-specific aggravating factors and *no* offence-specific mitigating factors:

(a) the Victim suffered extensive injuries, some of which were life-threatening and/or permanent;

(b) the Accused had harboured an intention to kill the Victim at the material time;

(c) the Accused had committed the offence using a deadly weapon;

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[36] Defence's Further Submissions at para 7.

(d) the Accused had struck at the Victim repeatedly, relentlessly, and forcefully in a particularly violent and vicious manner;

(e) the Accused had to some extent pre-planned the assault on the Victim; and

(f) the offence had caused public disquiet.

Offender-specific factors

30 In relation to the offender-specific sentencing factors, no aggravating factors were identified by the parties and none was apparent to the Court.

31 As for the mitigating factors, the Defence submitted that the Accused's lack of antecedents and good character were "mitigating".[37] The Prosecution did not challenge this point. It appeared that the courts' approach to the effect on sentence of an absence of antecedents had not been entirely consistent (see Benny Tan, "An Offender's Lack of Antecedents: A Closer Look at its Role in Sentencing", *Singapore Law Gazette* (May 2015)). This may require closer examination on another occasion. In the present case, whether or not the absence of antecedents could itself be considered mitigating, I did not think much credit could be given to the Accused given my finding that there had been some degree of pre-planning in relation to the offence. The Accused thus could not claim to have acted merely in a momentary lapse in judgment. The fact that the Accused's employer had described him as having "good character" must also be taken in context: she was testifying as to the Accused's punctuality and satisfactory work performance (see Judgment at [158] and [234]). These were not relevant factors to be accounted for in sentencing in the present case.

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[37] Defence's Submissions at para 13.

32 The Defence also stressed that the Accused was remorseful.[38] I accepted that, factually, the Accused had cried after the assault and had consistently stated in his police statements that he was apologetic. However, it is trite that "remorse" is only mitigating if it is motivated by genuine contriteness or regret. In this case, the Accused had to some extent pre-planned the assault, was caught red-handed, faced an overwhelming amount of evidence against him, and did not plead guilty (which was not an aggravating factor but meant that he could not use the guilty plea as evidence of his remorse). In these circumstances, no weight could be given to his apparent expressions of remorse.

33 Other factors raised by the Defence included the dishonour that the Accused's parents would suffer in their hometown[39] and the hardship that would be caused to his family members who were financially dependent on him.[40] While the Court was not unsympathetic to these concerns, they did not constitute mitigating factors.

34 The likelihood that the Accused would be repatriated upon his release from prison was a factor I considered in holistically determining whether the sentence needed to be enhanced on account of specific deterrence (see [10] above), but this did not constitute an independent mitigating factor. Whether the Accused would be repatriated or not was an extra-judicial decision which bore no relation to the Accused's culpability or the harm that the Victim suffered. Neither principle nor precedent supported giving the Accused specific credit for this.

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38 Defence's Submissions at paras 19–24.

39 Defence's Submissions at para 18.

40 Defence's Submissions at para 25.

35 In the circumstances, I was of the view that there was no operative offender-specific factor in the present case, whether of an aggravating or mitigating nature.

Precedents

36 Having identified the operative sentencing factors, I turn now to the precedents. In this regard, the Prosecution relied on *Ravindran* while the Defence cited *Seng Inn Thye*. I will discuss them in turn.

37 *Ravindran* was a recent decision of the High Court involving the physical and sexual abuse by the offender of a victim who worked as a domestic helper in a neighbouring flat. The brief facts were as follows. The offender switched off the circuit box of the neighbouring flat to lure the victim out of her house. After briefly conversing with the victim, the offender pushed her into the flat and raped her. After the rape, the victim broke free and tried to escape, but she was caught by the offender and raped for the second time. Thereafter, the offender attempted to kill the victim by strangling her with his hands and a raffia string. The offender only stopped when the victim fell unconscious. As a result of the strangulation, the victim suffered bruises and abrasions on her neck, a haemorrhage in the sclera of the right eye, and medial congestion of the left eye. The force of strangulation was so strong that the victim suffered urinary incontinence.

38 The offender claimed trial to the five charges brought against him, being two counts of rape, one count of attempted murder, one count of voluntarily causing hurt by dangerous weapons or means, and one count of house-trespass with preparation to assault. Chan Seng Onn J convicted the offender on all five charges and sentenced him to an aggregate term of 27 years' imprisonment and

24 strokes of the cane. In relation to the sentence for the offence of attempted murder, Chan J sentenced the offender to 12 years' imprisonment and six strokes of the cane (at [75]):

> … I took into account the fact that the accused had brought the raffia string with him and had used it to strangle [the victim] until she was unconscious and to such a degree of oxygen deprivation that she suffered urinary incontinence. He had intended to kill her by strangulation to prevent her from identifying him as the perpetrator of the rape, and fortunately for the accused, she survived. If it were otherwise, he would be facing the death penalty. In the circumstances, I sentenced the accused to 12 years' imprisonment and 6 strokes of the cane in respect of the Amended Third Charge.

39 I should note at the outset that at the time of my decision, *Ravindran* was apparently the only case involving attempted murder under s 307(1) of the PC since the amendment of the provision in 2007. I will explain the relevant statutory amendments later (see [45]–[48] below).

40 In my view, there were two main distinguishing factors between *Ravindran* and the present case. One, the extent of the injuries in the present case was significantly greater in number and severity. Indeed, some of the Victim's injuries were permanent and could not be concealed. There was no evidence of harm of such a nature or degree in *Ravindran*. Two, the element of public disquiet caused in the present case at the time of the offence was not operative in *Ravindran*.

41 These factors warranted a heavier sentence in the present case than that imposed in *Ravindran*.

42 I turn now to *Seng Inn Thye* on which the Defence relied. Here, the offender had taken a fruit knife to confront his ex-wife. The ex-wife said "if you want to kill me, you can kill me" and "come, come". The offender then stabbed

the ex-wife a total of 14 times. Although most of the wounds were superficial, one of them was "potentially life threatening". The ex-wife was hospitalised for eight days. The offender was found to be remorseful. He surrendered himself and was diagnosed by a psychiatrist of the Woodbridge Hospital to be suffering from a "recurrent depressive disorder".

43 The offender pleaded guilty to one count of attempted murder. Choo Han Teck J sentenced him to five years' imprisonment and four strokes of the cane, taking into account (a) the severity of the assault and the pain and danger he had put the ex-wife through, (b) his "struggle against his mental illness", (c) that he may not have committed the offence "in a cooler hour", (d) that he did not plan to stalk her with the intention of killing her, and (e) his hitherto unblemished record.

44 The Defence relied on this case as an analogous precedent. I did not agree. At the outset, I noted that *Seng Inn Thye* was decided in April 2003. At that time, s 307 had not yet been amended to its current version and the statutory sentencing range was materially different:

> **Attempt to murder**
>
> 307.—(1) Whoever does any act with such intention or knowledge 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 10 years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned and shall also be liable to caning.
>
> …
>
> **Other offences by convicts**
>
> (2) When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

45 In relation to attempted murder causing hurt (as opposed to attempted murder *simpliciter*), the pre-2007 statutory sentencing range under s 307(1) was mandatory imprisonment for life or up to ten years, and liability for caning. After a comprehensive review of the Penal Code in 2007, s 307(1) was amended by the Penal Code (Amendment) Act 2007 (No 51 of 2007) to provide for a statutory sentencing range of mandatory imprisonment for life or up to 20 years, and liability for caning and/or fine (see [6] above). Insofar as the imprisonment term, apart from imprisonment for life, was concerned, the maximum statutory sentence was *doubled*.

46 I pause to note that although the decision in *Seng Inn Thye* did not itself clarify, the charge there was presumably brought for attempted murder causing hurt, rather than attempted murder *simpliciter*, since caning was in fact imposed by the High Court.

47 In my view, the 2007 legislative change to s 307(1) was a significant development. In this regard, I agreed with the views expressed by Chao Hick Tin JA in the High Court decision in *Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [28]:

> It is true that the maximum sentence prescribed for an offence is generally indicative of its seriousness. It also follows that an increase in the maximum sentence for an offence is an indication that Parliament intended that the offence should thereafter attract heavier sentences, and the courts should reflect that intention in their sentencing decisions. However, such a change does not automatically have a conclusive effect, especially when Parliament states otherwise (see Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 5.008–5.010).

48 In relation to s 307(1), there was no known contrary Parliamentary intention that, assuming all else remained equal, this increase in the maximum

statutory sentence should *not* be given effect to by generally heavier sentences imposed by the courts.

49 Furthermore, quite apart from the legislative amendment, the present facts were significantly more serious than those in *Seng Inn Thye*. First, it appeared that the offender in *Seng Inn Thye* had reacted spontaneously to the ex-wife's taunts. In the present case, the Victim did not taunt the Accused and there was in fact some pre-planning by him (see [21] above). Second, there was no mention of any public disquiet caused by the offending conduct in *Seng Inn Thye*. Third, the ex-wife did not appear to have suffered as extensive or serious injuries as the Victim. Fourth, the offender in *Seng Inn Thye* pleaded guilty. Fifth, the court had found that the offender there suffered from a "recurrent depressive disorder", whereas in the present case I had found that the Accused did not suffer from any major psychiatric condition at the material time (see Judgment at [266]).

50 Accordingly, taking into account the legislative change to s 307(1) and the distinguishing factors, I was of the view that the term of imprisonment for the Accused should be significantly longer than the five-year sentence imposed in *Seng Inn Thye*.

51 As for the number of strokes of the cane, six strokes were imposed in *Ravindran* and four strokes in *Seng Inn Thye*. It was clear to me that in view of the nature of the offence and the aggravating factors, the submission of two strokes by the Defence was too lenient whereas the submission of six strokes by the Prosecution was appropriate and not excessive.

52 In the circumstances, after considering both precedents, I was of the view that a sentence of 14 years' imprisonment and six strokes of the cane was appropriate.

Sentencing framework

53 In its further submissions, the Prosecution proposed a sentencing framework in relation to the offence of attempted murder under s 307(1) of the PC. It submitted that the Court should take note of the maximum statutory penalty and apply its mind to the question of where within the spectrum of punishment devised by Parliament the particular offender's conduct falls. Further, the Court should also have regard to two parameters in determining the seriousness of the crime: the degree of harm caused, and the offender's culpability.[41] Applying these principles, the Prosecution urged the following sentencing framework:

Harm / **Culpability**	**Slight**	**Moderate**	**Severe**
Low	At least 5 years	At least 7.5 years	At least 10 years
Medium	At least 7.5 years	At least 10 years	At least 12 years
High	At least 10 years	At least 12 years	At least 14 years

41 Prosecution's Further Submissions at paras 24–25.

54 The Defence made no submissions on the Prosecution's proposed framework.

55 I was of the view that it was not desirable at this stage for a single judge sitting as a court of first instance to come to a concluded view as to the appropriate sentencing framework for all attempted murder cases going forward. In addition, I noted the following:

(a) Attempted murder cases are factually highly diverse. Unlike other violent crimes, the offence of attempted murder can be committed even in situations where little, if any, harm was caused (see, *eg*, illustration (*d*) to s 307(1)). The offender's culpability may also drastically differ depending on the steps that he had taken and the reasons why the victim was not killed.

(b) As the Prosecution itself noted, there was a less than substantial body of jurisprudence on offences committed under s 307(1). Indeed, it appeared that there had only been one decided case under s 307(1) of the PC since the 2007 Penal Code amendments. Nuances in sentences and sentencing considerations may thus not have been as well elucidated as compared to some of the other offences.

(c) Furthermore, it was not apparent whether the framework was applicable only to the second limb of s 307(1), or to both the first and the second limbs. If the former, the Prosecution would have to explain how the framework compared to the statutory sentencing range for the first limb as to sufficiently but fairly distinguish between attempted murder cases with and without hurt caused; if the latter, then the Prosecution should clarify how its sentencing framework would account for the two-tiered statutory structure of s 307(1). The relevance of

s 307(2), and the option of caning, may also have to be accounted for in the framework. These aspects of the proposed sentencing framework could be refined.

(d) Importantly, as would be evident from the tabulated framework above, the Prosecution chose to adopt a uniform "at least X years" expression to describe the indicative sentencing ranges for each function in the harm-culpability matrix. This expression meant that there was no upper limit to the indicative sentencing ranges. This was a curious departure from the usual form of sentencing ranges laid down in cases adopting a similar harm-culpability matrix such as *Logachev*. While the Prosecution's approach might not be unjustifiable, it would have an impact on the way the courts identify a starting point within the indicative sentencing range (which was, on the Prosecution's proposed framework, boundless in its upper end) and take into account the operative offender-specific factors. These difficulties were also not thoroughly explored.

Conclusion

56 For the foregoing reasons, I sentenced the Accused in respect of the Charge to 14 years' imprisonment, which was to commence from 21 December 2013 as the date from which he was remanded, and six strokes of the cane.

Woo Bih Li
Judge

Bhajanvir Singh and Lim Ai Juan Daphne
(Attorney-General's Chambers) for the Prosecution;
Rengarajoo s/o Rengasamy Balasamy (B Rengarajoo & Associates)
and Tan Heng Khim (Apex Law LLP) for the Accused.
