IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 221

Criminal Case No 20 of 2016

Between

Public Prosecutor

And

BDB

GROUNDS OF DECISION

[Criminal procedure and sentencing] — [Mitigation] — [Mitigating factors]

[Criminal procedure and sentencing] — [Sentencing] — [Ill-treatment of child]

[Criminal procedure and sentencing] — [Sentencing] — [Principles]

[Criminal procedure and sentencing] — [Sentencing] — [Voluntarily causing grievous hurt]

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Public Prosecutor
v
BDB

[2016] SGHC 221

High Court — Criminal Case No 20 of 2016
Lee Seiu Kin J
28 March; 25, 26, 29 July 2016

10 October 2016

Lee Seiu Kin J:

1 The accused pleaded guilty on 28 March 2016 to a total of four charges. Two of these charges (*ie*, the first and sixth charges) were for voluntarily causing grievous hurt under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), while the other two (*ie*, the third and fourth charges) were for ill-treatment of a child under s 5(1) and punishable under s 5(5)(*b*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA"). The accused also consented for two further charges (*ie*, the second and fifth charges) to be taken into consideration for the purpose of sentencing. These were for ill-treatment of a child under s 5(1) and punishable under s 5(5)(*b*) of the CYPA.

2 After the accused pleaded guilty, and in view of conflicting psychiatric opinions, I ordered a Newton Hearing for the purpose of ascertaining the accused's psychiatric state at the material time. After the Newton Hearing, and

after hearing the submissions of parties, I sentenced the accused on 29 July 2016 to a total term of imprisonment of eight years. The Public Prosecutor has since filed a Notice of Appeal against my decision on sentence, and I now give the grounds of my decision.

Statement of facts

3 The accused agreed to the following statement of facts (with the necessary redactions):

> **A. PARTIES INVOLVED**
>
> 1. The accused is one [BDB] ("the accused"), female, 33 years old (D.O.B [xxx]), Singaporean with NRIC No. [xxx]. At the time of the arrest, she was residing at [address redacted] (the "Unit").
> 2. The deceased is one [B] ("the deceased"), male, Singaporean with Birth Certificate No. [xxx]. He was the accused's biological son. At the time of his demise on 5 August 2014, he was 4 years old.
> 3. The witnesses are as follows:
>
> a. A1: [C], female, 7 years old. She is the accused's daughter and elder sister of the deceased.
>
> b. A2: [D], female, 38 years old. She is the accused's sister-in-law.
>
> c. A3: [E], female, 14 years old. She is the accused's neighbor.
>
> d. A4: [F], male, 50 years old. He is a doctor working at [Z] Clinic and Surgery located at [address redacted].
>
> **B. FIRST INFORMATION REPORT**
>
> 4. On 1 August 2014 at about 11.52pm, Bedok Police Division Headquarters received information from Kandang Kerbau Women's and Children's Hospital ("KKH") pertaining to a case where a patient was reported to have fallen at home and suffered 1) acute left subdural hematoma and 2) bruises of varying age. A copy of the first information report ([xxx]) is annexed as **Tab A**.
>
> **C. FACTS PERTAINING TO THE 1ST CHARGE CHC 900023-2014**

5. Investigation revealed that on 1 August 2014 sometime after 12pm, the accused fetched the deceased home from school. At that time, only the accused and the deceased were in the Unit.

6. After lunch, the accused asked the deceased to recite the numbers 11 – 18 in English, followed by Malay. However, the deceased was not able to do so in Malay. Feeling angry and disappointed with the deceased, the accused shouted at him. Although the deceased wanted to try again, the accused did not bother with him as she was angry. The deceased then went to have a nap.

7. When the deceased woke up at around 4.30pm, the accused asked the deceased to recite the numbers in Malay again. However, he was not able to do so. This caused the accused to become agitated. She pushed the deceased on his chest area using her right hand. This caused the deceased to fall backwards and hit his head on the floor.

8. The deceased stood up and tried to recite the numbers again. However, he still recited the numbers wrongly. At this point, the accused ignored him and walked towards the kitchen. The deceased followed her attempting to recite the numbers. In her frustration and anger that he was getting it wrong, the accused turned and pushed the deceased again on his chest using her right hand. This caused the deceased to fall and hit his head on the ground. The accused then used 1) her left leg to step on the deceased's right knee, and 2) her right leg to step on the deceased's left knee. She repeatedly did this action for about three to four times. She then walked to the kitchen. The deceased stood up and followed her.

9. As the accused wanted to fetch A1 from school, she told the deceased to shower and get ready after she had finished bathing. While the accused was bathing, the deceased stood outside the bathroom and continued reciting the number sequence wrongly. The accused ignored him and went to her room to change after her shower.

10. While the accused was in her room, she heard the deceased slamming the cover of the toilet bowl. When she was ready, she emerged from her room only to find that the deceased had yet to change. She then asked him what he was doing in the toilet. However, the deceased did not answer her. During this time, he also continued mumbling the number sequence. The accused grew frustrated and she choked the deceased using her right hand. With her

hand still on his neck, the accused pushed the deceased to the floor. When she let go of her grip, the deceased was breathing, although he was in a state of shock.

11. The accused then sat at the sofa in the living room and told the deceased that she did not want to hear him continue reciting the numbers. However, the deceased did not listen. The accused then informed the deceased that he could either stay at home or get ready to follow her to fetch A1. The deceased informed that he wanted to follow her. Hence, the accused proceeded to her room to take her handbag. By then, it was about 6.10pm.

12. Unfortunately, when the accused came out of her room, the deceased was still not ready and still continued reciting the numbers. Feeling angry, the accused used her right hand to choke the deceased by pushing her right hand against his neck until the deceased was lifted off the ground against the wall. Seeing that the deceased was gasping for air, the accused let go of her grip and the deceased fell to the floor. At this time, the deceased was not moving and responding.

13. The accused carried the deceased to the sofa to check his condition. However, the deceased was weak and unresponsive.

14. At 6.35pm, the accused decided to call A2 for assistance and to ask her to go over to the Unit. As she could not find her handphone, the accused quickly went down to the void deck of the Unit to use the public phone instead. On her way back to the Unit, the accused met A3 at the lift lobby and she asked A3 if she could help her with the deceased. A3 agreed.

15. When A3 arrived at the accused's residence, she noticed the deceased lying face up on the sofa. She observed that although the deceased's eyes were open, he was unresponsive. A3 tried to search for the deceased's pulse on his wrist and managed to detect it. As A3 observed that there were bruises on the deceased's chest, she opened the deceased's shirt whereupon she discovered more bruises on the deceased's chest.

16. As the deceased's clothes were wet, A3 asked the accused what had happened. The accused told A3 that the deceased had fallen inside the toilet and hit his head on the floor. Seeing that she was unable to help the deceased, A3 advised the accused to call for an ambulance before leaving the Unit.

17. At around 6.50pm, A2 reached the Unit and she noticed that the deceased's mouth was filled with foam. She also observed the following marks on him:

    a. Reddish marks on his neck;

    b. A reddish bump on his forehead; and

    c. A very big bump on the back of his head.

18. The accused and A2 quickly brought the deceased to the nearby clinic, [Z] Clinic and Surgery, where he was attended to by A4. A4 examined the deceased and observed that he was flaccid, his pupils were fixed and dilated, and his pulse was weak. A4 immediately called his staff to activate an ambulance, and the deceased was conveyed to Changi General Hospital ("CGH").

19. At CGH, the deceased underwent emergency craniotomy and evacuation of the blood clot in view of the critical nature of his condition. A CT brain scan revealed a left side subdural haematoma with midline shift and cerebral oedema. The following bruises on the deceased's body at varying stages of healing were also recorded:

    a. Left parieto-occipital haematoma x 2 (3 x 3 cm and 1 x 1 cm);

    b. Forehead wound healing with scab;

    c. Left anterior shoulder bruise; and

    d. Left medial malleolus bruise.

20. A copy of the medical report dated 18 August 2014 prepared by Dr [G], Medical Officer at the Department of Surgery (CGH), is annexed as **Tab B**

21. On 2 August 2015, the deceased was transferred to KKH on 2 August 2015 for further management. A copy of the medical report dated 17 September 2014 prepared by Dr [H], Consultant at Neurosurgical Service (KKH), is annexed as **Tab C**.

22. At KKH, the deceased remained in critical condition and was put on lift support. Subsequently, the deceased developed further complications, which required vasopression support. A further CT brain scan was performed and it showed severe cerebral oedema with brainstem herniation. In view of the findings and likelihood of a poor outcome and mortality, a conference was held with the deceased's family members and they decided to take the deceased off life support.

23. The deceased passed away on 5 August 2014 at 4.10pm.

Autopsy Report

24. On 6 August 2015 at 10 am at the Health Sciences Authority ("HSA") Mortuary, Consultant Forensic Pathologist Dr [J] conducted an autopsy on the deceased. A copy of the autopsy report with case number [xxx] is annexed as **Tab D**.

25. Essentially, the cause of death was certified as "head injury", comprising the following:

    a. Bruising of the scalp;

    b. A skull fracture; and

    c. Left subdural haemorrhage (i.e. bleeding in the space between the skull and brain).

26. Dr [J] was of the view that the head injury was caused by blunt force trauma, which resulted in severe swelling of the brain with raised intracranial pressure. Despite the surgery performed at CGH whereby a portion of the skull cap was removed to allow the swelling brain room to expand, the deceased nonetheless succumbed to his head injury.

27. Dr [J] also noted the following injuries on the deceased in her report:

    The following scars (old injuries) were present:

    1. A scar, 2 x 0.5 cm, on the middle portion of the right side of the forehead.

    2. A scar, 1 x 0.5 cm, on the submental region of the chin.

    3. A scar, 2 x 0.5 cm, on the central portion of the back of the head (parietal region).

    4. Multiple small linear scars, each less than 1 cm in length, on the anterior and the lateral aspects of the neck.

    The following recent external injuries were present:

    Head

    1. A superficial healing laceration, 2.5 x 0.5 cm, on the right side of the forehead.

    2. Three small healing abrasions, altogether over an area of 2 x 2 cm, on the right angle of the jaw.

3. A linear healing abrasion, 1.5 cm in length, surrounded by a purple bruise, 1.5 x 1.5 cm, on the chin.

4. A healing abrasion, 9 x 6 cm, on the left frontal-parietal region of the scalp.

5. A purple bruise, 2.5 x 2 cm, on the left parietal region of the scalp.

6. A purple bruise, 5 x 3 cm, on the central parietal region of the scalp.

7. A purple bruise, 5 x 4 cm, on the left parietal-occipital region of the scalp.

8. A purple bruise, 3 x 3 cm, on the occipital region of the scalp.

9. A purple bruise, 2 x 2 cm, on the posterior aspect of the superior portion of the left ear.

10. Multiple linear healing abrasions, each approximately 1 cm in length, on the posterior aspect of the left ear.

11. A purple bruise, 2 x 1.5 cm, on the posterior aspect of the superior portion of the right ear.

12. Multiple liner healing abrasions, each approximately 1 cm in length, on the posterior aspect of the right ear.

Neck

13. A purple bruise, 1 x 1 cm, on the right side of the neck.

14. Multiple linear healing abrasions, each approximately 1 cm in length and altogether over an area of 5 x 4 cm, on the left side of the posterior aspect of the neck.

Anterior chest

15. Four purple bruises, each 0.5 to 1 cm in diameter, and altogether over an area of 4 x 1.5 cm, on the anterior aspect of the right shoulder.

16. A green bruise, 3 x 1.5 cm, on the upper portion of the right lateral chest wall.

17. Two purple bruise, 0.5 x 0.5 cm each, just to the right of the middle portion of the sternum.

18. A green bruise, 2 x 1 cm, on the middle portion of the sternum.

19. A purple bruise, 2 x 1 cm, just to the left of the upper portion of the sternum.

20. A brown bruise, 3 x 3 cm, just below the left clavicle. Subsequent internal dissection revealed haemorrhage (6 x 5 cm in area) within the 1st and 2nd intercostal muscles; and underlying parietal pleura.

21. A purple bruise, 3 x 2 cm, on the anterior aspect of the upper portion of the left chest wall.

22. A green bruise, 1 x 0.5 cm, on the anterior aspect of the lower portion of the left chest wall.

Back

23. A purple bruise, 2 x 2 cm, on the midline of the lower back.

24. A purple bruise, 2 x 1 cm, just to the right of the midline of the lower back.

Right upper limb

25. A purple bruise, 2 x 1 cm, on the thenar eminence of the right hand.

26. A purple bruise, 2 x 2 cm, on the anterior-lateral aspect of the middle portion of the right forearm

27. A brown/purple/green bruise, 8 x 7 cm, around the posterior aspect of the right elbow.

28. Two purple bruises, 1 cm and 0.5 cm respectively, on the posterior-medial aspect of the right wrist.

Left upper limb

29. A purple bruise, 2 x 1.5 cm, on the thenar eminence of the left hand.

30. A brown bruise, 10 x 8 cm, around the posterior aspect of the left elbow.

31. A green bruise, 1.5 x 1 cm, on the posterior-lateral aspect of the lower portion of the left forearm.

32. A purple bruise, 1 x 1 cm, over the metacarpo-phalangeal joint of the left index finger, dorsally.

Right lower limb

33. A green bruise, 2.5 x 2 cm, on the anterior aspect of the right knee.

34. A purplish green bruise, 4 x 3 cm, on the medial aspect of the right knee.

Left lower limb

35. A green bruise, 4 x 2 cm, on the lateral aspect of the left anterior superior iliac spine.

36. A brown bruise, 4 x 3 cm, on the medial aspect of the left knee.

37. A brownish-purple bruise, 3 x 3 cm, on the lateral aspect of the left knee.

38. A purplish green bruise, 3 x 2 cm, on the lateral aspect of the left knee.

39. A healing abrasion, 0.8 x 0.5 cm, on the lateral aspect of the left foot.

Subcutaneous dissection

The back, upper limbs, lower limbs and buttocks were dissected along the subcutaneous planes. In addition to the bruises documented on the external surface of the body, the following areas of haemorrhage were present in the subcutaneous tissues (not visible externally):

1. 2 x 1.5 cm over the left scapula
2. 2 x 1 cm over the left scapula
3. 5 x 3 cm on the upper back, midline
4. 1.5 x 1 cm over the right scapula
5. 15 x 9 cm on the lower back

Toxicology report

28. On 6 August 2014, samples of the deceased's peripheral blood (oxalated), peripheral blood (plain) and urine were sent to HSA for analysis. A copy of the toxicology report ([xxx]) dated 25 August 2014 is annexed as **Tab E**.

29. Essentially, the toxicology results are unremarkable.

Conclusion

30. The accused has informed that she was feeling stressed about her financial problems when she pushed the deceased.

31. By virtue of her actions where she voluntarily caused grievous hurt to the deceased, the accused has thereby

committed an offence under section 325 of the Penal Code (Cap. 224, 2008 Rev. Ed.).

D. FACTS RELATING TO THE 6TH CHARGE (DAC 912921-2014)

32. Investigations have revealed that sometime in March 2012 in the Unit, the accused was trying to teach the deceased the alphabet. However, he was not able to follow her instructions. She became irritated with him and pushed him. The accused then told the deceased to study, but he refused to do so. In her anger, the accused pushed the deceased a second time and stepped on his ribs after he fell to the floor.

33. The deceased then asked if he could draw and the accused gave him paper to do so. However, the deceased scribbled on the sofa instead. This angered the accused, who then twisted and pulled his hand very hard.

34. On 12 March 2012, the accused brought the deceased to KKH and the deceased was found to have sustained fractures to his left elbow, left calf, and his right 8th – 11th ribs. He also had haematomas on his forehead and the back of his head. In addition, there were multiple small healing bruises on his checks, nasal area, right ear, right elbow and the back of his trunk. A copy of the medical report dated 24 November 2014 by Dr [K], Associate Consultant at the Children's Intensive Care Unit, Department of Paediatric Subspecialties (KKH), is annexed as **Tab F**.

35. On 14 March 2012, the deceased was referred to the Medical Social Worker and the Ministry of Family and Social Development for suspected non-accidental injuries. Then, the accused lied that the injuries suffered by the deceased were a result of a fall. For the deceased's benefit, MSF decided to place the deceased under the care of his maternal uncle and aunt-in-law. The report from the Ministry of Social and Family Development dated 2 September 2014 as prepared by Ms [L], Senior Child Protection Officer from the Family and Child Protection and Welfare Branch, is annexed as **Tab G**.

36. By virtue of the above, the accused has voluntarily caused grievous hurt to the deceased and she has thereby committed an offence under section 325 of the Penal Code (Cap. 224, 2008 Rev. Ed.).

E. FACTS RELATING TO THE 3RD CHARGE (DAC 912918-2014)

37. Investigations have revealed that on the afternoon of 30 July 2014, the accused asked the deceased to recite the numbers while they were in the living room of the Unit. However, the deceased was not able to do so. In her frustration and anger, the accused used both hands to push the deceased between his shoulder and chest area. This resulted in the deceased falling backwards and hitting the back of his head against the television console table.

38. The accused has admitted to this act.

39. By virtue of the above, the accused has thereby committed an offence under section 5(1) and punishable under section 5(5)(b) of the Children and Young Persons Act (Cap. 38, 2001 Rev. Ed.).

F. FACTS RELATING TO THE 4TH CHARGE (DAC 912919-2014)

40. Investigations have revealed that sometime at night on 30 July 2014 in the Unit, the accused scolded the deceased for passing motion on the floor. After the deceased had cleaned himself up, he went over to the accused. The accused then kicked him at his waist area. The deceased fell and the accused stepped on the deceased's stomach with both of her feet for a few seconds before stepping away.

41. By virtue of the above, the accused has thereby committed an offence under section 5(1) and punishable under section 5(5)(b) of the Children and Young Persons Act (Cap. 38, 2001 Rev. Ed.).

G. CONCLUSION

42. The accused admits to the above 4 offences, and stands charged accordingly.

4 In these grounds of decision, reference will be made to certain terms which have been defined in the statement of facts (*eg*, the "Unit" and "the deceased").

The Parties' submissions on sentence

The Prosecution's submissions on sentence

5 I now turn to the parties' submissions on sentence and I start by looking at the Prosecution's submissions. In this regard, the Prosecution submitted that the foremost sentencing principles in this case were deterrence and retribution.

6 With respect to first and sixth charges under s 325 of the Penal Code, the Prosecution in their written submissions submitted for a jail term at the higher end of the sentencing range of four to nine years' imprisonment. In the course of oral submissions, this was refined to a more precise figure of seven years' imprisonment, although it was not clear if this was only in relation to the first charge or both charges. In addition, the Prosecution urged me to impose additional terms of imprisonment in lieu of caning. A number of cases were cited by the Prosecution, although four were identified as being particularly instructive.

7 The first of these was *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 ("*Firdaus*"). In this case, the accused, who had no prior criminal record, was convicted on three charges after a trial lasting eight days. One of these was under s 325 of the Penal Code while the other two were under s 5(1) and punishable under s 5(5)(*b*) of the CYPA. The victim was a three-year-old boy who was living with his mother and the accused, with whom his mother had a relationship. The victim's mother was undergoing divorce proceedings with the victim's biological father, and the accused had agreed to be the victim's stepfather pending the divorce. The charge under s 325 of the Penal Code was for voluntarily causing grievous hurt to the victim by causing the victim to sustain head injury of intracranial haemorrhage which

endangered his life. The victim eventually died from this injury. The facts that formed the basis for the charge are as follows. The victim was crying and the accused had hit the victim on his hand using his finger, at the same time shouting "diam" (meaning "quiet") at him. The accused then started slapping the victim using his right hand, all the while shouting "diam". When the victim did not stop crying, the accused threw four or five punches at the victim's face and forehead and jabbed upwards at the victim's chin, before grabbing the victim by the mouth with his right hand and holding onto the victim's shoulder with his left hand, lifting him off the ground and slamming him into the wall next to the bedroom doorframe. He did not stop after slamming the victim, but carried on slapping the victim on his back, at which point the victim stopped crying. In relation to this charge, the sentence imposed by the High Court on appeal was seven years' imprisonment and 12 strokes of the cane.

8 The second case was an unreported case, MA 293/96/01 (unreported) ("the MA 293 case"). The accused in this case was the mother of a four-year-old girl who pleaded guilty to throwing her daughter onto the concrete floor twice when the victim took a long time to finish her food. As a result, the victim sustained severe internal head injuries and became mentally retarded and visually impaired. The accused was sentenced to four years' imprisonment.

9 Next was another unreported case, DAC 53650/2010 & Ors (unreported) ("the DAC 53650 case"). The accused here was the stepfather of the deceased victim, a girl aged two years and four months. He pleaded guilty to two counts under s 325 of the Penal Code and three counts punishable under s 5(5)(*b*) of the CYPA. He also consented for six counts punishable under s 5(5)(*b*) of the CYPA to be taken into consideration for the purpose of

sentencing. The victim was found to have multiple bruises at various parts of her body with an acute-on-chronic subdural haematoma. Despite urgent evacuation of the subdural haematoma, the intracranial pressure remained persistently high and the family opted to withdraw life support. The victim was also found with fractures healing by callus of the left seventh to ninth ribs laterally. With respect to the first charge under s 325 of the Penal Code, the accused had gripped the victim's upper arms and shook them twice. He then gripped the victim's thighs and arms before lifting her up and throwing her onto the mattress. He also pinched the victim's arms. These injuries resulted in four circular bruises over the victim's arms and possibly contributed to the brain injuries. In the second charge under s 325 of the Penal Code, there were two episodes of head-butting the victim which likely resulted in the subdural haematoma. The accused also stepped on the victim's stomach, and this likely caused the fracture of her left seventh to ninth ribs. The accused claimed that he had assaulted the victim as he was feeling stressed over his retrenchment and the household chores, and having to cook and look after the victim. He was angry with the victim over her whining and sought to assault her to release tension. The accused was sentenced to seven years' imprisonment and six strokes of the cane for each charge under s 325 of the Penal Code.

10 The last case highlighted by the Prosecution was yet another unreported case, DAC 942245/2015 & Ors (unreported) ("the DAC 942245 case"). In this case, a two-year-old boy died after he had been subjected to physical abuse by his own mother ("B1") and her boyfriend ("B2"). Both of them pleaded guilty to four charges comprising one charge under s 325 read with s 34 of the Penal Code and three charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA. 26 other charges in respect of B1 and 18 other charges in respect of B2 were taken into consideration for the purpose of

sentencing. From 18 October 2015 to 22 November 2015, the victim had been kicked and slapped by B1 daily except for two days. B2 had also done the same or joined B1 in doing so on certain dates. In relation to the charges under s 325 read with s 34 of the Penal Code, the accused persons had: (a) kicked the victim several times on his chest and stomach while he was standing; (b) slapped the victim's body and face several times; (c) kicked the victim's stomach which resulted in him falling and hitting his head on the ground; and (d) forced chili down the victim's throat. In respect of this charge, B1 was sentenced to nine years' imprisonment, while B2 was sentenced to eight years' imprisonment and 12 strokes of the cane.

11 As for the third and fourth charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA, the Prosecution in their written submissions submitted for a jail term of 18 to 30 months' imprisonment. During oral submissions, this was refined to a sentence in the region of 18 months' imprisonment for the more severe fourth charge and a shorter sentence for the third charge. A number of cases were cited although two were eventually identified as being of greater relevance.

12 In an unreported case, MA 187/98/01 (unreported) ("the MA 187 case"), the accused, who was the father of both victims, pleaded guilty to two charges of ill-treatment. Three other charges were taken into consideration for the purpose of sentencing. The accused had punched the first victim on his cheeks, and had beaten the second victim with his belt buckle until the belt buckle broke off. He had also kicked the second victim in the head, causing him to lose consciousness temporarily. The accused was sentenced to 18 months' imprisonment for each charge.

13 The other case emphasised by the Prosecution was the DAC 53650 case. Unfortunately, the Prosecution's account of this otherwise unreported case was not entirely helpful. The only information placed before me in relation to the charges under s 5(1) of the CYPA was that the accused had pinched the victim's stomach and right ear, and had also punched her on the right side of her chest. However, the accused was sentenced to two and a half years' imprisonment for two charges and nine months' imprisonment for the remaining charge and it was not possible to tell which sentences were imposed for which acts.

14 In totality, the Prosecution urged me to order the sentences for the first, fourth and sixth charges to run consecutively, and to impose a global sentence of at least 12 years' imprisonment. This essentially involved running the sentences for the three most serious charges consecutively.

The Defence's submissions on sentence

15 The Defence submitted for a global sentence of less than ten years' imprisonment. In the course of oral submissions, a sentence of less than 12 months' imprisonment per charge was urged in relation to the third and fourth charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA, with the sentence for the third charge lower than the more severe fourth charge. There was no specific sentence submitted for in respect of the first and sixth charges under s 325 of the Penal Code.

16 In pushing for a global sentence of less than ten years' imprisonment, the Defence sought to distinguish *Firdaus* and the DAC 53650 case, where global sentences of 12 years' imprisonment and 12 strokes of the cane were meted out. With respect to *Firdaus*, it was argued that: (a) the accused's acts

were less serious and there was no violence inflicted on any private parts (this latter point was in relation to one of the charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA in *Firdaus*); (b) the accused's acts were borne out of being overwhelmed by external stressors and being unable to get the deceased to follow her instructions properly; (c) the accused suffered from mental conditions which contributed to her offending behaviour; and (d) the accused had pleaded guilty. Factors (b) and (c) were repeated *vis-à-vis* the DAC 53650 case, alongside the submission that the accused in the present case faced fewer charges.

17 The Defence also highlighted and sought to distinguish the decision in *Public Prosecutor v AFR* [2011] 3 SLR 833 ("*AFR*"), where the accused had caused the death of his 23-month-old daughter. He was convicted at trial on a reduced charge of culpable homicide not amounting to murder punishable under s 304(*b*) of the Penal Code.

18 In *AFR*, the accused had returned home and saw the victim playing with and chewing on his cigarettes, with several cigarettes scattered on the floor. According to the accused, the victim had done something similar to his cigarettes two days earlier, and he had warned her then not to touch his cigarettes. The accused brought the victim into the kitchen and started to scold the victim. The victim then began to cry. According to the accused, he felt stressed because the victim was crying very loudly and he had a lot of things on his mind at that time. As the victim cried, the accused slapped her several times. According to the accused, he had slapped the victim four times, but the evidence suggested that the bruises found on the victim had most likely been caused by punches instead. The accused claimed that after slapping the victim, he punched her upper arms several times. As the victim could not take the pain, she turned her body away from him. Despite this, the accused continued

to hit her several more times. According to the accused, he had "smacked" the victim several times.

19 Thereafter, the victim fell into a kneeling position. Even so, the accused continued to punch her arms a few times while she was still kneeling. While the victim's back was facing him, the accused pulled both of the victim's ears and again hit the victim's back a few times. At about this time, the accused's wife walked into the kitchen. According to her, the accused kicked and stamped on the victim's back several times while the victim was in a seated position on the floor with her upper body bent forward so that her chest and face were touching the floor. The accused's wife saw the accused kick the left side of the victim's back several times with the upper part of his foot. The victim eventually died. The cause of death was certified as "haemopericardium, due to … ruptured inferior vena cava". The accused was traced and his antecedents included convictions for robbery, the sale and distribution of obscene films, the exhibition of uncensored films and desertion from his civil defence liabilities.

20 The Court of Appeal held (at [21]) that in cases where physical abuse of a young child by a parent or caregiver has led to the death of the child in circumstances which constitute an offence punishable under s 304(*b*) of the Penal Code, a term of imprisonment of between eight to ten years and caning of not less than six strokes should ordinarily be imposed as a starting point. The accused was sentenced to ten years' imprisonment and ten strokes of the cane.

21 The Defence submitted that the following facts distinguished the present case from *AFR*:

(a) *AFR* concerned an accused who was convicted of a charge under s 304(*b*) of the Penal Code, whereas the most serious charge the accused faced was a charge under s 325 of the Penal Code.

(b) In *AFR*, the Court of Appeal described (at [23]) the acts of the accused as having been of "extreme violence and force". The accused there had repeatedly punched the victim even when she had fallen into a kneeling position and the victim had died because of a ruptured inferior vena cava, which was a very rare injury that was more commonly seen in high-speed collisions. Moreover, the Court of Appeal in *AFR* had observed (at [32]) that the victim was "literally battered like a lifeless doll". The argument seemed to be that the violence in the present case was less relentless and less intense than in *AFR*.

(c) In *AFR*, the accused's act of violence had a direct and almost immediate consequence on the victim passing on. In the present case, on the other hand, the deceased eventually died of head injuries that were likely due to the fall that occasioned when the accused let go of her hand because the deceased was gasping for air.

(d) In *AFR*, the "irrefutable evidence of prior physical abuse (and also possible sexual abuse)" negated the accused's "self-serving assertion that he had been a loving father to the [victim]" (at [54]). This apparent lack of contrition had to be contrasted with the accused's plea of guilt and acceptance of responsibility in the present case.

(e) The accused in *AFR* had a string of antecedents, unlike the accused in the present case, who had no antecedents.

(f) In *AFR*, the Court of Appeal observed (at [56]) that the accused's adaptive functioning was "good by general standards", and this was to be contrasted with the present case.

22 The Defence also sought to distinguish the DAC 942245 case, where a global sentence of 11 years' imprisonment was imposed in respect of B1 and ten years' imprisonment and 12 strokes of the cane was imposed in respect of B2. It was argued that the acts in that case were more deliberate and that the accused persons there had faced more charges. There was also no suggestion that the accused persons in that case had suffered from any mental condition or stressors that led to their actions. They were also made aware of the wrongfulness of their acts by a witness but disregarded the repeated advice to stop the abuse.

23 A final case relied upon by the Defence was based on a news article. The accused, who was suffering from a relapse of major depressive disorder, had killed her autistic seven-year-old son by pushing him out of the kitchen window of their ninth-floor flat. She pleaded guilty to a lesser charge of culpable homicide not amounting to murder and was sentenced to five years' imprisonment. However, in so far as this case did not involve any acts of child abuse, I did not consider it to be of much precedential value.

The relevant sentencing factors

24 It goes without saying that the appropriate sentence for any given offence is one that takes into account all the relevant facts and circumstances. In this connection, the Prosecution highlighted the following aggravating factors in this case: (a) the young age of the deceased; (b) the relationship between the accused and the deceased; (c) the gravity of the injuries; and (d)

the multiplicity of acts in one transaction. These were fairly uncontroverted. However, to the extent that most, if not all, of these factors *already* presented themselves in the precedent cases, they did not warrant an *increase* to the sentences imposed in those cases. On the other hand, it was apparent to me that a number of mitigating factors necessitated the *downward* calibration of the sentences to be imposed in the present case.

25 Before proceeding to consider these factors, however, I propose to deal briefly with the Prosecution's submission that the foremost sentencing principles in this case were deterrence and retribution. While I accepted that retribution was a relevant sentencing principle, I did not accept that deterrence was a sentencing principle that could feature heavily, if at all, on the facts of the present case.

26 It is trite that deterrence as a sentencing principle involves both specific and general deterrence. The former corresponds to the deterrence of the offender and the latter to the deterrence of likely or potential offenders (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [20]). It is also uncontroversial that offences against vulnerable victims normally warrant general deterrence (*Law Aik Meng* at [24(b)]). In this regard, the Prosecution submitted that "the message to be sent is that there is zero tolerance for child abuse, and that offences against young vulnerable children resulting in serious injury and death will be viewed with grave and unrelenting disapprobation".

27 In my view, the Prosecution's submission failed to sufficiently appreciate the nature of the present case. It was clear to me that the accused had committed the offences out of anger and in the spur of the moment. She did not do so in rational and cold-blooded cruelty. It therefore made little or no

sense to speak of the accused being "deterred" by a "deterrent" sentence when the offences were committed in moments of hot-blooded irrationality. The same could be said of likely or potential offenders in similar situations. Putting it another way, neither specific nor general deterrence could be applicable on the facts of this case, where the offences were crimes of passion. Indeed, this dovetails the High Court's caution in *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 (at [31]) that it is inappropriate to invoke deterrence without a proper appreciation of how and when it should be applied. The court's subsequent observations (at [34]) apply squarely to the present case:

> … While there is neither any magic formula nor any neat and precise calibration to apply in the process, *it is however, clearly insufficient to merely allude to deterrence as the basis for imposing a stiff sentence, especially in instances where it is invoked as a principal sentencing consideration* or when existing guidelines are not followed. In such instances, the precise reasons for invoking deterrence or for choosing to depart from existing guidelines together with the attendant judicial concerns must be clearly and unambiguously articulated. *Arbitrary or inadequate reliance on "deterrence" as nothing more than a stock phrase for want of something better fails to discharge the onerous judicial responsibility of ensuring that while a sentence meted out unequivocally conveys the court's assessment of the relevant considerations the offender's position has also been fairly and reasonably assessed.* [original emphasis omitted; emphasis added in italics]

28 With this in mind, I return to examine the relevant mitigating factors in the present case. Three such factors were apparent to me: (a) the accused's psychiatric condition; (b) the accused's inability to cope; and (c) the accused's remorse.

The accused's psychiatric condition

29 I discuss first the accused's psychiatric condition. The Prosecution relied on the opinion of Dr Subhash Gupta ("Dr Subhash") from the Institute of Mental Health ("IMH"). In his report dated 2 September 2014 ("Dr

Subhash's report"), Dr Subhash was of the view that the accused was not suffering from any mental disorder at the time of the offences. However (and this is significant), he also opined that the accused had several personality aberrations:

> She has several personality aberrations (recurrent suspicions regarding sexual fidelity of spouse/partner, *tendency to act impulsively, very low tolerance to frustration, a low threshold for discharge of aggression*, and marked proneness to blame others) which do not amount to a recognisable mental disorder but ***make her more likely than others to cope maladaptively*** *(such as by* ***using aggression in interpersonal relationships****) when experiencing stressful situations*. [emphasis added in italics and bold italics]

On the other hand, the Defence relied on the opinion of Dr Tommy Tan ("Dr Tommy") from Novena Psychiatry Clinic. In his report dated 3 May 2015 ("Dr Tommy's report"), Dr Tommy diagnosed the accused as having Asperger's Syndrome ("Asperger's") or Autism Spectrum Disorder ("ASD"), as well as Major Depressive Disorder of Peri-partum Onset ("MDD"). The Prosecution additionally relied on the evidence of Dr Sajith Sreedharan Geetha ("Dr Sajith") from the IMH. In his report dated 6 June 2016, Dr Sajith concluded that the accused did not have Asperger's. I should also point out that Dr Subhash and Dr Tommy had provided further reports but these were unremarkable in so far as their respective positions remained largely unchanged. Indeed, both Dr Subhash and Dr Tommy, as well as Dr Sajith, maintained their views even at the Newton Hearing.

The accused did not have Asperger's

30 I found that the accused did not have Asperger's. In so finding, I gave considerable weight to the evidence of Dr Sajith, who had nearly 11 years of experience in dealing with the assessment and management of people with intellectual disability and ASDs including Asperger's. He had done diagnostic

assessments for several hundreds of patients with ASDs during his career and was currently undertaking assessment of ASDs every week in his new case clinic at the IMH. In contrast, Dr Tommy candidly admitted during the Newton Hearing that he only saw about one to two patients with Asperger's a year. The relative expertise of Dr Sajith was also not lost on the Defence, which conceded during oral submissions that Dr Sajith was the expert in the realm and that it would be quite difficult to push the point that the accused had Asperger's.

The accused did not suffer from MDD

31 I also found that there was insufficient evidence to establish that the accused was suffering from MDD *at the time of the offences* in 2012 and 2014. There was no clear indication in the part of Dr Tommy's report dealing with the depressive symptoms reported by the accused as to *when* the accused was experiencing these symptoms. In fact, it appeared to me that most of these related to events surrounding the accused's breakup with her ex-husband, [M], which took place around 2009. Admittedly, there was one paragraph which referred to the accused's financial problems after the breakup. However, I did not think that these financial problems alone could result in the accused suffering from MDD.

32 In relation to the first, third and fourth charges, the Prosecution also pointed to a part of Dr Subhash's report where Dr Subhash had recorded how the accused had informed him that since she had shifted to her own flat in March 2014, she had been "happy". At the Newton Hearing, the accused attempted to explain that by "happy", she had really meant relieved as she had gotten her own house and her then-boyfriend, [N], had been around to give her moral support. I did not find this explanation convincing given the context in

which the word "happy" appeared in Dr Subhash's report. The sentence that followed from this reference to the accused being "happy" described how the accused used to go out on Saturdays with [N] and how they used to go out together with the children as a family outing every Sunday. It therefore appeared to me that, as submitted by the Prosecution, the accused had moved on with her life after breaking up with [M]. She was "happy" in the ordinary sense of the word.

The accused had personality aberrations

33 Although the accused did not have Asperger's and did not suffer from MDD, it was clear from Dr Subhash's report that the accused had several personality aberrations. The Prosecution submitted that there was no suggestion that the accused had lacked control over her conduct because of these personality aberrations and that there was no evidence of a causative link between these personality aberrations and the accused's offending conduct. The Prosecution further referred to *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") (at [28]–[29]) for the proposition that mitigating value is not automatically attached even in a proven case of mental disorder. Particular emphasis was placed on the following passage in *Chong Hou En* (at [28]):

> If the nature of the mental disorder is such that the individual retains substantially the mental ability or capacity to control or refrain himself when he commits the criminal acts but he instead chooses not to exercise his self-control, and if it is also shown that punishment will be effective in instilling fear in him and thereby deter him from committing the same criminal acts in the future, I will attribute very little or no mitigating value to the presence of the mental disorder.

34 This passage from *Chong Hou En* did not assist the Prosecution. It was clear from [26] of *Chong Hou En* that the High Court at [28] was referring to

cases where the mental disorder is one which "invariably manifests itself in the doing of the very act which is criminalised". This includes disorders such as kleptomania and paedophilia (see [33] of *Chong Hou En*). The High Court then went on to hold (at [34]) that "[w]here the disorder is one which may manifest itself in different ways, some of which are criminal and others perhaps not, the concept of a causal link is still relevant and useful". I considered this observation to be of some applicability to the present case, notwithstanding that the accused's personality aberrations did not amount to a recognisable mental disorder.

35 In this connection, Dr Subhash's own words were that the accused's personality aberrations included a "tendency to act impulsively", a "very low tolerance to frustration" and a "low threshold for discharge of aggression". Critically, these personality aberrations made her "more likely than others to cope maladaptively (*such as by using aggression in interpersonal relationships*) when experiencing stressful situations" [emphasis added]. I had earlier observed that the accused had committed the offences out of anger and in the spur of the moment. There was therefore a clear and unmistakeable causal link between the accused's personality aberrations and her offending conduct.

36 It also appeared to me that there was another aspect of the accused's personality aberrations. This concerned her lack of empathy. It was stated in Dr Tommy's report that:

> [The accused] is unable to feel empathy for others. She is unable to recognise emotions and feelings in other people. She is not able to recognise others are suffering or in pain.

At the Newton Hearing, Dr Tommy referred to an example of the accused's lack of empathy: the accused had expected her mother to take care of her

children even though her mother had cancer. This was a set of facts which Dr Subhash was also privy to, and he appeared to agree that the accused did have a lack of empathy. In my judgment, there was some causal linkage between this lack of empathy and the accused's offending conduct as well.

37 In my view, mitigating weight had to be accorded to the accused's personality aberrations. Consider the case of a hypothetical accused who had committed the same set of offences under identical circumstances, except that this hypothetical accused did not have any personality aberrations. It was clear that the accused in the present case should receive a lower sentence than this hypothetical accused.

The accused's inability to cope

38 Another factor that weighed on my mind was the accused's inability to cope as a result of the various stressors she was facing at the time of the offences.

39 The most obvious of these was the fact that the accused was left to take care of the deceased by herself. The accused did not look after the deceased since his birth. Rather, the deceased had been looked after by various people, including [M] and the accused's mother. In early 2014, the accused was living with her family in a flat in Pasir Ris ("the Pasir Ris flat") and her mother was the deceased's primary caretaker then. Sometime that year, the accused moved out of the Pasir Ris flat and into the Unit. She had done so as a result of pressure from her family members, and had brought along the deceased and [C].

40 I pause at this juncture to note that one point of divergence between the Prosecution and the Defence concerned *when* the accused had moved into the

Unit. The Prosecution relied on the accused's police statements and Dr Subhash's report to submit that the accused had moved into the Unit in March 2014. On the other hand, the accused's evidence during the Newton Hearing was that while she had *started* moving into the Unit in March 2014, the move was a progressive one which only ended in July 2014. A third account came from Dr Subhash, who was informed by the accused's sister-in-law that the accused had started moving out in March 2014 and that the move was completed in May 2014. At the same time, there was evidence from the accused that [N] had stayed over at the Unit. Given that [N] was arrested on 6 June 2014 and subsequently imprisoned, it appeared to me that the move would probably have been completed by June 2014.

41 Be that as it may, I did not consider the actual date the accused moved into the Unit to be very material. The fact is that in July 2014, the accused was left to take care of the deceased by herself. Her ability to cope during this time was independent of how long or short a time she had to adjust to her new living circumstances. In this regard, the accused testified that she could not cope when she had to take care of the deceased by herself in July 2014. Her repeated cries for help from her family ultimately went unanswered as her brother had objected to her sick and aged mother helping out.

42 To make matters worse, the accused was unable to bond with the deceased. This tragic state of affairs was unveiled during the Newton Hearing, where the accused said that the deceased did not want to talk to her or sit close to her. The accused found it difficult to talk to the deceased, who only talked to the accused's mother, [C], his grandfather and the accused's sister-in-law's two children. The accused could not bond with the deceased. The accused said that she loved the deceased. She was very upset about having caused his death because he did not understand her and she also could not understand him.

Furthermore, there was also evidence that the accused was experiencing financial difficulties around this period. The accused gave evidence that she was being chased for school fees, and this point appeared in Dr Subhash's report as well. Dr Subhash also recorded how the accused had said that she was not working and that [M] had not been paying full maintenance for the children (although this was disputed by [M]). This was exacerbated by [N]'s departure, as he had used to buy meals for them and contribute to household expenses.

43 I also noted that while most of the evidence concerning the accused's inability to cope revolved around the period in July 2014 and therefore related only to the first, third and fourth charges, it seemed that the accused was in not much of a better position in March 2012, which was the relevant time period *vis-à-vis* the sixth charge. During this time period, the accused had to suddenly take care of the deceased because her mother had gone to Malaysia. She was also then in the midst of a messy divorce.

44 It was therefore clear to me that the accused, through no fault of her own, had found herself in circumstances which caused her to be unable to cope. I was therefore prepared to accord mitigating weight to this factor. However, there was a remark in *AFR* which called for some attention, and I now turn to address it.

The remark in AFR

45 In *AFR*, the Court of Appeal remarked (at [12]) that any parent or caregiver who inflicted violence with impunity on any young children under his charge would not be allowed to mitigate his culpability on the ground of financial or social problems. The context in which this appears is as follows:

> … this court, in coming to its decision on the present appeal, felt compelled to send a clear signal to all parents and caregivers (*ie*, those in a position of authority over and/or having a duty of care in relation to young children) that any unwarranted infliction of violence on young children would not be tolerated and would be met with the full force of the law. No parent or caregiver has licence to inflict violence with impunity on any young children under his charge. *Any parent or caregiver who does so will not be allowed to mitigate his culpability on the ground of financial or social problems*, nor will he be allowed (for mitigation purposes) to exclaim with regret that he did not mean to inflict violence on the victim in question, whom he professes to love. [emphasis added]

46 At first blush, it appeared that this remark in *AFR* precluded me from according any mitigating weight to the accused's inability to cope as this factor arguably stemmed mainly from the accused's "financial or social problems". On closer analysis, however, I did not consider it to have this effect, at least in the case before me.

47 I did not read the Court of Appeal's remark to mean that mitigating weight could *never* be accorded in *all* cases of child abuse. The Court of Appeal in *AFR* was dealing with a case of child abuse that was *exceptionally violent* (see [18]–[19] and [21(b)] above). Indeed, the Court of Appeal observed (at [33]–[34]) that this was one of the worst cases of child abuse encountered by the Court of Appeal, and that the accused's culpability fell within the most egregious end of the spectrum of cases under s 304(*b*) of the Penal Code. In such a context, the Court of Appeal's remark was certainly understandable. I also noted that the Court of Appeal's remark was addressed to parents and caregivers who inflicted violence *with impunity* on young children under their charge. It therefore seemed to me that the Court of Appeal was *not* going so far as to say that mitigating weight could *never* be accorded in *all* cases of child abuse. Rather, my reading of the Court of Appeal's remark was that no mitigating weight should be accorded in certain cases of child

abuse, such as where there was exceptional violence or where violence was inflicted with impunity.

48 I also did not think that the Court of Appeal intended to set a rigid rule to apply in all cases of child abuse because it is axiomatic that each case must be considered on its unique set of facts. Suppose once again that a hypothetical accused had committed the same set of offences under identical circumstances, except that this hypothetical accused, unlike the accused in the present case, was wealthy and did not have the problems associated with the relative poverty of the accused in the present case. Should the hypothetical accused receive less sympathy than the impoverished accused in the present case? I had in fact posed this question to the Prosecution in the course of oral submissions. The initial response was that it might be an aggravating factor for the hypothetical accused but not a mitigating factor for the accused in the present case. However, perhaps upon realising that this was just a different way of stating the same thing, the Prosecution then appeared to accept that mitigating weight might be attached to the present accused's financial and social problems, although there should be no substantial discount given the gravity of the offences that had been committed. The Prosecution's retreat from its initial stance was telling and underscored the difficulties with taking too broad a reading of the Court of Appeal's remark in *AFR*. As a *general* rule, justice demands that compassion should be shown to an accused placed in unfavourable circumstances through no fault of his own. After all, it is often said that justice must be tempered with mercy. It might very well be that in certain situations, justice demands otherwise, and the Court of Appeal's remark in *AFR*, in my view, targets precisely such situations. However, I did not consider the present case to be such a case.

49 Furthermore, the present case was not one where mitigating weight was to be given to the accused's financial and social problems *per se*. It is to be recalled that the accused's personality aberrations made her more likely than others to cope maladaptively *when experiencing stressful situations*. The accused's financial and social problems were therefore a *catalyst* for her personality aberrations. In other words, the accused's financial and social problems could nevertheless be considered in conjunction with her personality aberrations.

50 For these reasons, I saw it proper to accord mitigating weight to the accused's inability to cope. For the avoidance of doubt, I should also make it clear that the present case is to be distinguished from a case where an accused commits an offence *because of* financial need. In such cases, the fact that the offence was motivated by financial need would appear to be of little mitigating value (see Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 18.029–18.037).

The accused's remorse

51 Finally, I also gave some weight to the accused's remorse as demonstrated by her plea of guilt. The present case was clearly distinguishable from the extreme facts of *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185, which was relied on by the Prosecution.

52 Additionally, the Defence submitted that the accused would be forever haunted by the fact that she had killed her son and that this was a very severe punishment on its own. I agreed with this submission and therefore also took into consideration the burden that the accused would have to carry for the rest of her life for causing the death of her own child.

53 In summary, therefore, there was before me an accused who was pressured to move out by her family and left to take care of the deceased by herself. She was unable to bond with the deceased and was facing financial difficulties. For these reasons, she was unable to cope. Added to all these were her personality aberrations which made her more likely than others to cope maladaptively when experiencing stressful situations. She had pleaded guilty and was undoubtedly remorseful for taking the life of her own child. With these factors in mind, I turned to consider the issue of sentence.

My decision on sentence

The first and sixth charges: s 325 of the Penal Code

54 The accused's acts in the first charge under s 325 of the Penal Code were what ultimately led to the death of the deceased. Regard had to be given to the fact that *death* was ultimately caused and for this reason I did not consider the MA 293 case to be instructive. Neither did I consider the DAC 942245 case to be helpful as that was a case involving extreme cruelty: the two accused had combined together to abuse the victim and the victim was even force-fed chili. *Firdaus* and the DAC 53650 case were closer to the present case, although I was of the view that the level of the violence in those cases was greater than in the present case. Having regard to this distinguishing factor, the mitigating factors in the present case, and the fact that the accused was not liable for caning, I imposed a sentence of seven years' imprisonment for the first charge.

55 As for the sixth charge, this involved harm of a considerably less serious nature even when compared to the MA 293 case (where the victim became mentally retarded and visually impaired). I therefore imposed a sentence of two years' imprisonment.

The third and fourth charges: s 5(5)(b) of the CYPA

56 The fourth charge was clearly the more serious of the two charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA. I took reference from the MA 187 case but was of the view that the level of violence in that case was once again greater than in the present case: the accused there had beaten the second victim with his *belt buckle* until the belt buckle broke off and his kicking of the second victim in the head even caused the second victim to *lose consciousness temporarily*. Considering also the mitigating factors in the present case, a lower sentence was warranted. I therefore sentenced the accused to imprisonment for one year in respect of the fourth charge.

57 The third charge involved an even lower level of violence. I was of the view that six months' imprisonment was appropriate for this charge.

The global sentence

58 With respect to the global sentence, I was of the view that the present case was less serious than *Firdaus*, where a global sentence of 12 years' imprisonment and 12 strokes of the cane was imposed. I have already noted the lower level of violence in respect of the charge under s 325 of the Penal Code and the same could be said of at least one of two charges under s 5(1) and punishable under s 5(5)(*b*) of the CYPA , where the accused shook, grabbed and bit the victim's genitalia. The severity of the offences clearly weighed heavily in the sentencing equation in that case, with the High Court observing (at [38]) that this was "without doubt one of the worst cases of child abuse in Singapore". It should also be pointed out that the accused in *Firdaus* had claimed trial to the charges, unlike the accused in the present case.

59 A global sentence of 12 years' imprisonment and 12 strokes of the cane was also imposed in the DAC 53650 case. As I had pointed out earlier, the level of violence in respect of the charge under s 325 of the Penal Code was lower in the present case than in the DAC 53650 case. Notwithstanding the absence of particulars *vis-à-vis* the charges punishable under s 5(5)(*b*) of the CYPA (see [13] above), it appeared to me from the sentences imposed (two and a half years' imprisonment for two of the charges and nine months' imprisonment for the remaining charge) that the level of violence in relation to these charges was likely to be considerable as well. I also noted that the accused in the DAC 53650 case had pleaded guilty to a total of five charges, which was more than the four charges in the present case.

60 As for *AFR*, where a sentence of ten years' imprisonment and ten strokes of the cane was imposed in respect of a single charge, I agreed with the Defence's analysis of the facts which differentiated the present case from *AFR* (see [21] above). In particular, I noted that the level of violence in *AFR* was significantly greater than in the present case (see [18]–[19] and [21(b)] above). I should also point out once again that the Court of Appeal in *AFR* had observed (at [33]–[34]) that this was one of the worst cases of child abuse encountered by the Court of Appeal and that the accused's culpability fell within the most egregious end of the spectrum of cases under s 304(*b*) of the Penal Code.

61 Finally, as regards the DAC 942245 case, where a global sentence of 11 years' imprisonment was imposed in respect of B1 and ten years' imprisonment and 12 strokes of the cane was imposed in respect of B2, this was clearly a highly aggravated case, with the victim having been abused almost daily over a period of more than one month. The number of charges

taken into consideration for the purpose of sentencing (26 for B1 and 18 for B2) was also significant.

62 In addition to the differences between the precedent cases and the present case, I also considered the mitigating factors in the present case. All things considered, I ordered the sentence for the fourth charge to run consecutively with the sentence for the first charge. The sentences for the third and sixth charges were to run concurrently with the sentence for the first charge. The total term of imprisonment was eight years, to be backdated to 2 August 2014, the date of arrest.

Lee Seiu Kin
Judge

April Phang, Marshall Lim and Soh Weiqi (Attorney-General's Chambers) for the prosecution;
Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for the accused.