IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 69

Criminal Appeal No 26 of 2016

Between

PUBLIC PROSECUTOR

… *Appellant*

And

BDB

… *Respondent*

In the matter of Criminal Case No 20 of 2016

Between

PUBLIC PROSECUTOR

And

BDB

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Grievous Hurt]

[Criminal Law] — [Statutory offences] — [Children and Young Persons Act] — [Ill-treatment of child or young person]

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

Public Prosecutor
v
BDB

[2017] SGCA 69

Court of Appeal — Criminal Appeal No 26 of 2016
Sundaresh Menon CJ, Tay Yong Kwang JA and Steven Chong JA
6 July 2017

29 November 2017

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This appeal stemmed from a tragic case. Over a period of more than two years, the respondent, BDB ("the Respondent"), repeatedly abused her own child. On the last of these occasions, the child was abused to such an extent that he died. This tragedy was exacerbated by the fact that the abuse continued even after the involvement of the Child Protective Service ("the CPS") of the Ministry of Social and Family Development ("the MSF") when the matter was first brought to the attention of the authorities. The Respondent was separated from the child for a time thereafter, but she later regained custody of the child and then continued to ill-treat him and engage in a pattern of conduct that can only be described as cruel.

2 Following investigations carried out after the child's death, the Respondent was charged under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) with voluntarily causing grievous hurt to the child, and under s 5 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("the CYPA") with ill-treating him. She pleaded guilty before a High Court judge ("the Judge"), who meted out an aggregate sentence of eight years' imprisonment: see *Public Prosecutor v BDB* [2016] 5 SLR 1232 ("the GD"). The sole question in this appeal by the Prosecution was whether that sentence was manifestly inadequate. At the conclusion of the oral arguments, we allowed the Prosecution's appeal and gave our brief reasons. We indicated that we would elaborate on those reasons and furnish our detailed grounds of decision in due course. This, we now do.

3 In these grounds, we examine the relevant sentencing principles for violent offences against children and young persons that lead to serious injury or death. Many, if not most, of these cases have resulted in charges being brought *not* for culpable homicide, but for voluntarily causing grievous hurt under s 322 of the Penal Code and punishable under s 325 of that Act, and/or for ill-treating a child or young person under s 5(1) read with s 5(5)(*b*) of the CYPA. We therefore consider the prevailing sentencing precedents for these two offences. We then set out the approach that should guide the courts in this context. In that light, we explain our decision in this appeal. We also urge, in a closing coda, legislative reform to afford the courts the power to impose enhanced penalties for certain offences against vulnerable victims, in particular, children and young persons, in view of their heinous nature.

The factual background

The Respondent and the charges against her

4 The Respondent is a 35-year-old female Singaporean. At the time of her arrest on 2 August 2014, she was residing at a flat in Eunos Crescent ("the Eunos flat") with her two children, a seven-year-old daughter ("P") and a four-year-old son ("A"), who was the victim of the abuse.

5 A total of six charges, two under s 325 of the Penal Code and four under s 5 of the CYPA, were brought against the Respondent. The Prosecution eventually proceeded with only the two s 325 charges (the first and sixth charges) and two of the CYPA charges (the third and fourth charges), with the remaining two CYPA charges (the second and fifth charges) taken into consideration for sentencing purposes. The four charges which were proceeded with read as follows:

> That you, **[BDB]**,
>
> **1st Charge**
>
> on 1 August 2014, at [the Eunos flat], did cause grievous hurt to [A], *to wit*, by doing the following:
>
> 1) Using your hands to push him on his chest area several times which resulted in him falling and hitting his head on the ground;
>
> 2) Using your legs to step on his knees;
>
> 3) Using your right hand to choke him; and
>
> 4) Pushing your right hand against his neck until he was lifted off the ground,
>
> which caused the said [A] to subsequently die from head injuries, and you have thereby committed an offence punishable under section 325 of the Penal Code … .
>
> …

> **3rd Charge**
>
> on the afternoon of 30 July 2014, at [the Eunos flat], being a person who has custody of a child, namely, [A], male, 4 years old at the time of the incident, did ill-treat the said child, *to wit*, by using both hands to push him between his shoulder and chest area which resulted in him falling backwards and hitting the back of his head against the television console table, and you have thereby committed an offence under section 5(1) of the [CYPA], and punishable under section 5(5)(b) of the said Act.
>
> **4th Charge**
>
> sometime at night on 30 July 2014, at [the Eunos flat], being a person who has custody of a child, namely, [A], male, 4 years old at the time of the incident, did ill-treat the said child, *to wit*, by kicking him at his waist area and stepping on his stomach with both of your feet for a few seconds after he fell, and you have thereby committed an offence under section 5(1) of the [CYPA], and punishable under section 5(5)(b) of the said Act.
>
> …
>
> **6th Charge**
>
> sometime in March 2012, at [the Eunos flat], did cause grievous hurt to [A], *to wit*, by doing the following:
>
> 1) Using your hands to push him and stepping on his ribs after he fell to the floor; and
>
> 2) Twisting and pulling his hand,
>
> which caused the said [A] to sustain fractures to his left elbow, left calf, and his right 8th – 11th ribs, [and] you have thereby committed an offence punishable under section 325 of the Penal Code … .

6 The two CYPA charges which were taken into consideration for sentencing purposes concerned, respectively, an incident on 31 July 2014 in which the Respondent pushed A and caused him to fall (the second charge), and an incident sometime in June 2014 in which the Respondent lifted A by the neck before dropping him to the ground (the fifth charge).

7 We set out below the events relating to the four charges which were proceeded with.

The events relating to the charges proceeded with

The first reported instance of abuse in March 2012 (the facts relating to the sixth charge)

8 Chronologically, the events which gave rise to the sixth charge were the first to occur. Sometime in March 2012, when A was just two years and five months old, the Respondent was trying to teach him the alphabet. When he did not or could not follow her instructions, she became irritated with him and pushed him. Following further instructions that A failed to comply with, the Respondent pushed him a second time, causing him to fall to the floor. The Respondent then stepped on his ribs. Shortly after this, A asked if he could do some drawing. The Respondent gave him some paper, but A scribbled on the sofa instead. The Respondent became angry, and twisted and pulled A's hand very hard.

9 On 12 March 2012, the Respondent brought A to KK Women's and Children's Hospital ("KK Hospital"), where he was admitted from 12 March to 2 April 2012. At the hospital, the Respondent lied and claimed that A's injuries were a consequence of his having fallen twice: once down a flight of stairs at home the day before, and prior to that, in the playground two weeks earlier. A was found to have multiple fractures (on his left elbow, left calf and right eighth to eleventh ribs), haematomas on his forehead and the back of his head, several small healing bruises on various parts of his body, as well as other healed linear scars on his lower legs and lower abdomen. Developmental assessment also revealed a moderate level of expressive and receptive speech delay.

The involvement of the CPS

10 Arising from this incident, which was also the first reported instance of the Respondent's abuse of A, A was referred to the MSF for suspected non-

accidental injuries. The CPS investigated A's case and interviewed the Respondent, as well as A's father and P. Upon A's discharge from KK Hospital on 2 April 2012, he was initially placed in the care of foster caregivers identified by the CPS. Three months later, on 2 July 2012, A was placed under the care of his maternal uncle and the latter's wife ("the maternal relatives"), who were assessed to be suitable for this purpose.

11 A few months later, in November 2012, the Respondent and P moved in to live with the maternal relatives and A. The CPS noted that during this period, no recurrence of abuse was reported. With no evident child protection concerns, the CPS treated the case as closed on 5 February 2014.

The move to the Eunos flat

12 Sometime in the first half of 2014, the Respondent and her two children moved to the Eunos flat. It appears that this came about because of pressure from the maternal relatives, who were unhappy that there were too many people living at their home.

Ill-treatment in July 2014 (the facts relating to the third and fourth charges)

13 The abuse of A resumed shortly after the move to the Eunos flat. On 30 July 2014, the Respondent pushed A while they were at the Eunos flat, causing him to fall backwards and hit the back of his head against a television console table. This transpired evidently because the Respondent became angry and frustrated over A's failure to recite certain numbers that she had asked him to.

14 Later in the evening on the same day, the Respondent kicked A in the waist area. A had upset the Respondent because he had moved his bowels on

the floor. After A fell as a result of being kicked, the Respondent stood on his stomach with both of her feet for a few seconds before stepping away. These two incidents on 30 July 2014 formed the factual backdrop of, respectively, the third and fourth charges.

The events on 1 August 2014 which resulted in A's death (the facts relating to the first charge)

15 Two days later, on 1 August 2014, the Respondent and A returned home shortly after noon after A had finished school for the day. Only the Respondent and A were present in the Eunos flat at the time. The Respondent asked A to recite some numbers in English and Malay, but he could not do so in Malay. Angry and disappointed, the Respondent shouted at A. She then ignored him for some time.

16 Meanwhile, A went to take a nap. He was awakened at about 4.30pm and was asked by the Respondent once again to recite the numbers in Malay. When he was unable to do so, the Respondent became agitated and pushed him on his chest. He fell backwards and hit his head on the floor. He stood up and tried to recite the numbers, but was unsuccessful. The Respondent then ignored A and walked towards the kitchen, with A following her and attempting to recite the numbers yet again. The Respondent turned and pushed A again on his chest, causing him to fall and hit his head on the ground again. The Respondent then stepped on A's knees with both legs repeatedly three or four times.

17 As it was approaching the time for the Respondent to fetch P home from school, she ordered A to shower and change after she had finished bathing. While the Respondent was in the shower, A stood outside and continued to recite the numbers wrongly. The Respondent ignored him and went to her room to change after her shower. While she was in her room, she heard A slamming

the cover of the toilet bowl. She went to ask A what he was doing in the bathroom, but he did not answer. Instead, he continued mumbling the numbers. Frustrated, the Respondent choked A on his neck using her right hand and pushed him to the floor.

18 The Respondent then left A, went to the living room and told A that she did not want to hear him reciting the numbers anymore. She also told A that he could either accompany her to fetch P home from school or stay at home. A indicated that he wanted to accompany her. She thus went to take her handbag from her room. By then, it was about 6.10pm. When the Respondent came out of her room, A was still not ready to leave and was still reciting the numbers. In anger, the Respondent choked A again by pushing her right hand against his neck and lifting him off the ground with his back against the wall. Seeing that A was gasping for air, the Respondent let go and A fell to the floor. At this point, A was no longer moving. The Respondent carried him to the sofa, but found him weak and unresponsive.

19 At 6.35pm, the Respondent called her sister-in-law for assistance and asked her to go over to the Eunos flat. She made the call from the void deck of her block of flats because she could not find her mobile phone. On her way back to the Eunos flat, she met her 14-year-old neighbour at the lift lobby and asked the latter for help. The neighbour arrived at the flat and noticed A lying face up on the sofa. Despite his eyes being open, he was unresponsive. The neighbour managed to detect his pulse and also noticed bruises on his chest. The Respondent told the neighbour that A had fallen and hit his head on the floor. The neighbour advised her to call an ambulance.

20 At around 6.50pm, the Respondent's sister-in-law arrived and noticed that A's mouth was filled with foam. She also noticed reddish marks on his

neck, a reddish bump on his forehead and a very big bump on the back of his head. She and the Respondent rushed A to a nearby clinic. After an initial examination, A was conveyed by ambulance to Changi General Hospital ("CGH"), where he underwent an emergency craniotomy and evacuation of a subdural blood clot (a blood clot in the space between the skull and the brain). Apart from his head injuries, various bruises on A's body at different stages of healing were observed. After the operation, A was transferred from CGH to KK Hospital for further management the next day, 2 August 2014. There, he remained in a critical condition and was put on life support. He subsequently developed further complications. A conference was held with his family members, who decided to take him off life support in view of the poor prognosis. A eventually passed away on 5 August 2014 at 4.10pm.

21 In the autopsy report, A's cause of death was identified as "head injury" consisting of bruising of the scalp, a skull fracture and left subdural haemorrhage. The forensic pathologist concluded that the head injury had been caused by blunt force trauma.

Psychiatric evaluation of the Respondent

22 After her arrest on 2 August 2014, the Respondent was first examined by Dr Subhash Gupta ("Dr Gupta"), a consultant with the General and Forensic Psychiatry Division of the Institute of Mental Health ("IMH"). In his report dated 2 September 2014, Dr Gupta opined that although the Respondent had several "personality aberrations", these did not amount to a recognisable mental disorder and the Respondent was therefore fit to plead. Dr Gupta also noted that the Respondent's personality aberrations, which he listed as "recurrent suspicions regarding [the] sexual fidelity of [her] spouse/partner, tendency to act impulsively, very low tolerance [for] frustration, a low threshold for

discharge of aggression, and marked proneness to blame others", made her more likely than others to cope maladaptively when faced with stressful situations.

23 Dr Tommy Tan ("Dr Tan"), the defence expert from Novena Psychiatry Clinic, subsequently examined the Respondent. In his report dated 3 May 2015, he opined that the Respondent suffered from both Asperger's Syndrome and Major Depressive Disorder ("MDD") of peri-partum onset. Dr Gupta considered Dr Tan's report and issued a clarification report dated 16 February 2016 in which he provided his response to Dr Tan's report. In essence, Dr Gupta concluded that the Respondent did not suffer from either disorder at or around the time of the offences.

24 The Prosecution and the Defence subsequently agreed to have the Respondent examined by Dr Sajith Sreedharan Geetha ("Dr Geetha"), another doctor at the IMH and a specialist in autism spectrum disorders including Asperger's Syndrome. Dr Geetha was only asked to opine on whether the Respondent suffered from Asperger's Syndrome, and his conclusion was that she did not.

The proceedings and the decision below

25 The Respondent was charged as stated at [5] above, and pleaded guilty on 28 March 2016 to the four charges which the Prosecution proceeded with. The Judge ordered a Newton hearing to ascertain the Respondent's psychiatric state at the material time as he considered that this would have a significant bearing on the sentence that should be imposed. The Judge also directed Dr Gupta and Dr Tan to interview more witnesses so that both psychiatrists would, as far as possible, be on an equal footing in terms of the number of witnesses they had interviewed and the information that they had access to. Dr Gupta and Dr Tan did as directed, but did not change their initial views.

During the Newton hearing, a joint session involving all three experts was conducted. At the end of the Newton hearing, the Judge sentenced the Respondent on 29 July 2016 to an aggregate term of eight years' imprisonment.

26 The aggravating factors which the Judge took into account in arriving at his decision were: (a) the young age of A; (b) the relationship between the Respondent and A; (c) the severity of A's injuries; and (d) the multitude of acts of violence involved in each of the incidents that formed the subject matter of a charge. Noting that these factors "*already* presented themselves in the precedent cases" [emphasis in original], the Judge held that there was no basis for imposing on the Respondent a sentence harsher than the range of sentences imposed in those cases (see the GD at [24]).

27 Before turning to the mitigating factors which, in his view, were absent from the precedent cases and warranted a lower sentence in the Respondent's case, the Judge addressed the Prosecution's submission that "the foremost sentencing principles in this case were deterrence and retribution" (see the GD at [25]). He accepted that retribution was a relevant sentencing principle. However, he did not accept that specific deterrence was a sentencing principle that could feature heavily in the present case because the Respondent had committed the offences "out of anger and [on] the spur of the moment" (see the GD at [25]–[27]). He took the view that where the offences were "crimes of passion", it would generally be inappropriate to invoke deterrence as a relevant sentencing consideration (see the GD at [27]).

28 The Judge then analysed the mitigating factors which he considered relevant, namely: (a) the Respondent's psychiatric condition; (b) her inability to cope with stressful situations; and (c) her remorse (see the GD at [28]). With regard to the Respondent's psychiatric condition, the Judge found that the

Respondent was not suffering from either Asperger's Syndrome or MDD at the time of the offences. He preferred Dr Gupta's evidence on the issue of Asperger's Syndrome; and on the issue of MDD, he held that there was insufficient evidence to establish that the Respondent was suffering from this condition at the material time (see the GD at [30]–[32]). However, he also found that the Respondent had personality aberrations which had "a clear and unmistakable causal link" with her offending conduct (see the GD at [35]), and considered that mitigating weight should be accorded to these personality aberrations.

29 In respect of the Respondent's inability to cope with stressful situations, the Judge noted that the offences had been committed at a time when the Respondent was left to take care of A by herself after moving to the Eunos flat. Prior to the move, the Respondent had had the help of various family members (such as the maternal relatives) in looking after A. Although the exact time when the Respondent moved to the Eunos flat in the first half of 2014 was disputed by the parties, the Judge did not consider this to be important. He highlighted the fact that the Respondent had been taking care of A on her own at the material time in July 2014 (see the GD at [41]), and considered that her ability to cope with all that being A's primary caregiver entailed was not dependent on the length of time which she had had to adjust to her new living circumstances at the Eunos flat. The Judge took this view essentially because he did not think the Respondent's personality aberrations would change with the passage of time. He considered that these personality aberrations, coupled with the Respondent's inability to bond with A, had mitigating value. He also regarded the Respondent's financial and social problems as stress-inducing factors that aggravated her personality aberrations. In all the circumstances, the Judge concluded that the Respondent was unable to cope with her situation and this mitigated her culpability (see the GD at [42] and [44]).

30 The Judge imposed a sentence of seven years' imprisonment for the first charge and two years' imprisonment for the sixth charge as he considered that the latter "involved harm of a considerably less serious nature" than the former (see the GD at [54]–[55]). As for the two CYPA charges, he imposed imprisonment terms of six months and one year for the third and fourth charges respectively (see the GD at [56]–[57]). The Judge ordered the sentence for the fourth charge to run consecutively with that for the first charge, with the rest of the sentences to run concurrently. The aggregate term of imprisonment imposed was thus eight years, and this was backdated to 2 August 2014, the date of the Respondent's arrest (see the GD at [62]).

The parties' arguments on appeal

31 The Prosecution appealed on the ground that the Judge erred in law in his approach to determining the appropriate sentences. There were several aspects to its argument. The Prosecution contended, first, that mitigating weight should not have been accorded to the Respondent's personality aberrations, and, second, that it was wrong to disregard deterrence as a relevant sentencing consideration because, among other things, the Respondent's offences were not "crimes of passion". Third, the Prosecution submitted that the Judge erred in placing little weight on several aggravating factors which were relevant. Fourth, the Prosecution argued that the aggregate sentence of eight years' imprisonment was manifestly inadequate because it was not commensurate with the sentencing precedents in cases involving violence against a young child that resulted in death. The Prosecution sought the following sentences in place of those imposed by the Judge:

(a) for the first charge, at least eight years' imprisonment;

(b) for the third charge, at least 12 months' imprisonment;

(c) for the fourth charge, at least 18 months' imprisonment; and

(d) for the sixth charge, at least four years' imprisonment.

The Prosecution further submitted that the Judge should have ordered the sentences for the first, fourth and sixth charges to run consecutively, and sought an aggregate sentence of at least 12 years' imprisonment.

32 As against this, the Respondent's counsel submitted that the Judge correctly appreciated the relevant mitigating factors, and contended that the aggregate sentence of eight years' imprisonment was sufficient and reasonable because it adequately reflected the gravity of the Respondent's wrongdoing. While each mitigating factor, considered individually, might not have warranted a reduced sentence, an unfortunate concatenation of factors contributed to the significant pressure which the Respondent faced at the time of the offences. These factors were: (a) the Respondent's personality aberrations; (b) her inability to cope and bond with A; (c) her financial and social problems; and (d) the lack of support which she encountered in caring for A. The Respondent's offences were, as the Judge rightly found, committed "out of anger and '*in moments of hot-blooded irrationality*'" [emphasis in original]. The sentencing considerations of general and specific deterrence should therefore not feature significantly in the present case.

The relevant sentencing principles

33 We first deal with the relevant sentencing principles before we turn to explain the reasons for our decision in this appeal.

Offences involving abuse of vulnerable victims

34 The law recognises the special need to protect certain groups of vulnerable persons, such as the handicapped, the incapacitated, children and the elderly. An offender's culpability will generally be viewed as enhanced where the victim is vulnerable. This is because the offender will, in such circumstances, be seen as exploiting or taking advantage of a relatively helpless person. In general, the more vulnerable the victim, the more culpable the offender: see Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 6th Ed, 2015) at pp 168–169. Our own sentencing jurisprudence has long emphasised that the victim's vulnerability is a significant aggravating consideration in sentencing: see *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 at [30] and *Public Prosecutor v Teo Chee Seng* [2005] 3 SLR(R) 250 ("*Teo Chee Seng*") at [9].

35 In the specific context of violence against children, in *Public Prosecutor v AFR* [2011] 3 SLR 833 ("*AFR*"), we made it clear to all parents and caregivers that such violence would not be tolerated and would be met with the full force of the law (at [12]). We also observed in the earlier decision of *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*"), in the context of the *sexual* abuse of young victims, that (at [33]):

> The ***ultimate relationship*** of trust and authority is that between a parent and his or her child. There exists between them a human relationship in which the parent has a moral obligation to look after and care for the child. In our view, the level of confidence and trust that a child naturally reposes in his or her parent entails that a parent who betrays that trust and harms the child ***stands at the*** *furthest* ***end of the spectrum of guilt*** … [emphasis in original in italics; emphasis added in bold italics]

In our judgment, these observations apply with equal force to the distinct but closely analogous situation of *physical* abuse of children.

36 By maintaining an uncompromising stance against offenders who abuse vulnerable victims, several objectives may be served. First, this helps to deter other like-minded members of the public, as was observed in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [24(b)] and *AFR* at [12] and [30]. Second, by denouncing such conduct through the imposition of stiff sentences, we give expression to public outrage at the fact that the offenders in question have taken advantage of their victims' vulnerability: see Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) ("*Sentencing Principles in Singapore*") at para 16.060. Third, the sentencing consideration of retribution is engaged in cases where serious violence is inflicted on a vulnerable victim. Fourth, imposing a severe sentence in such cases helps to ensure that the punishment is proportionate to the offender's culpability: see *AFR* at [32].

37 Among vulnerable victims, *young* victims are notable for several reasons. More often than not, there will be a gross physical disparity at play, and as a result, the victims will often be defenceless and unable to protect themselves. Moreover, the abuse will often be inflicted by parents or guardians abusing their position of trust and authority, and this makes the abuse difficult to detect and prevent. As a consequence, the abuse can continue over a sustained period of time, resulting in the accumulation of injuries with grievous consequences. For this reason, deterrence is an especially weighty consideration in offences against young victims. Indeed, when a child is abused by a person who is entrusted with the care of that child, this is itself a further aggravating factor: see *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 ("*Firdaus*") at [19]. Violent acts against children are particularly odious when they are committed within the setting of a familial relationship because they destroy the bonds of trust and interdependency that exist between family

members: see *Public Prosecutor v Luan Yuanxin* [2002] 1 SLR(R) 613 at [17] and *UI* at [33].

38 The most severe cases of abuse of young victims are those resulting in the death of the victim. Many of these cases have been prosecuted not under the culpable homicide provisions found in the Penal Code (namely, ss 299 and 300), but rather, under s 325 for voluntarily causing grievous hurt. Despite the multitude of aggravating circumstances that are commonly found in these cases, a review of the relevant precedents reveals that in the most serious of these cases, where a young victim's death was caused by a parent or caregiver, the aggregate imprisonment sentence imposed for the various charges brought against the offender under s 325 of the Penal Code (and, where applicable, s 5 of the CYPA) ranged from only seven to 12 years. We examine these sentencing precedents more closely below.

The sentencing framework for cases prosecuted under s 325 of the Penal Code

39 Where *grievous* hurt is voluntarily caused, the offence is typically prosecuted under s 325 of the Penal Code, as opposed to under s 323, which deals generally with cases where simple hurt is voluntarily caused. The following kinds of hurt are deemed "grievous" under s 320 of the Penal Code:

> (*a*) emasculation;
>
> (*aa*) death;
>
> (*b*) permanent privation of the sight of either eye;
>
> (*c*) permanent privation of the hearing of either ear;
>
> (*d*) privation of any member or joint;
>
> (*e*) destruction or permanent impairing of the powers of any member or joint;
>
> (*f*) permanent disfiguration of the head or face;

> (*g*) fracture or dislocation of a bone;
>
> (*h*) 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;
>
> (*i*) penetration of the vagina or anus, as the case may be, of a person without that person's consent, which causes severe bodily pain.

40 A charge of voluntarily causing grievous hurt is much more serious than one of voluntarily causing simple hurt simply because the injuries contemplated under s 320 of the Penal Code are serious and debilitating, and extend even to death. Unsurprisingly, the permitted sentencing range in s 325 is more severe than that in s 323, and extends to imprisonment of up to ten years and may also include a fine or caning. As against this, the prescribed sentencing range for voluntarily causing simple hurt is imprisonment of up to two years *or* a fine of up to $5,000, or both.

41 As stated in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice*") at p 266, the facts and circumstances of each offence of voluntarily causing grievous hurt vary considerably, and each case must be evaluated based on its own particular facts:

> *The different forms of grievous hurt vary in their seriousness.* For example, permanent privation of sight or a bodily part would be more serious than a simple fracture. The Penal Code (Amendment) Act [(Act 51 of 2007)] expanded the definition of 'grievous hurt' by including 'death' and 'penetration of the vagina or anus' as categories of grievous hurt. Clearly, *where death has been caused …, the imposition of a higher sentence must be considered.* In general, the factors that would dominate sentence are the degree of deliberation; the extent and duration of the attack; the nature of the injury; and the use of a weapon (the dangerousness of it). The obvious aggravating factors would be premeditation, a lengthy application of violence, group assault, significant injuries, permanence of injuries, the use of a weapon, a young or otherwise vulnerable victim, abuse of position, and previous convictions … [emphasis added]

42 In a similar vein, C K Thakker *et al*, *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code, 1860* (Bharat Law House, 27th Ed, 2013) states that the sentence to be imposed for voluntarily causing grievous hurt should vary according to the seriousness of the injury (at vol 2, p 2088). This stands to reason given the wide range of injuries that may bring an offence within the ambit of s 325 of the Penal Code. The seriousness of the hurt or injury caused to the victim is thus a primary indicator of the seriousness of the offence in determining the appropriate sentence.

The sentencing precedents

43 Before we analyse some of the sentencing precedents under s 325 of the Penal Code involving offenders who inflicted physical violence on young victims, we observe that written grounds explaining the sentences imposed were not issued in most of them (see, *eg*, the cases discussed at [48], [49] and [53] below). It follows that their precedential value will be limited: see *Keeping Mark John v Public Prosecutor* [2017] SGHC 170 at [18] and *Public Prosecutor v Lim Cheng Ji Alvin* [2017] SGHC 183 at [13]. Subject to this, we consider the precedents in two broad categories below: cases where death was caused, and cases where non-fatal serious injury was caused.

(1) Cases where death was caused

44 Of the three cases that we considered in which the victim died, written grounds are available only for *Firdaus*, and it is to this that we first turn.

45 In *Firdaus*, a three-year-old child was severely beaten on 14 January 2008 by his mother's boyfriend, who was his caregiver and guardian when his mother was not around. At the time of the offence, the child's mother was not present and the offender was thus charged with taking care of the child. The

offender lost his temper over the child's persistent crying despite his attempts to placate the child. The offender shouted at the child and asked the child why he was so naughty. When the offender pointed to a wall that he had previously ordered the child to stand in front of as a form of punishment, the child cried even louder. The offender hit and slapped the child, all the while shouting at the child to stop. When the child still did not stop crying, the offender punched the child repeatedly in the face and jabbed upwards at the child's chin before grabbing the child by the mouth with his hand, lifting him off the ground and slamming his head into a wall. This head injury led to intracranial haemorrhage that eventually caused the child's death. This incident formed the basis of a charge of voluntarily causing grievous hurt under s 325 of the previous revised edition of the Penal Code (namely, the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 edition of the Penal Code")). The offender also faced two other charges under s 5(1) of the CYPA: one for grabbing, shaking and biting the child's penis on the same day, and one for punching the child in the head with great force two days earlier.

46 For the s 325 charge, the trial judge imposed a sentence of six years' imprisonment and 12 strokes of the cane. On appeal, Chan Sek Keong CJ enhanced this sentence and imposed the then *maximum* term of seven years' imprisonment and 12 strokes of the cane. Chan CJ noted (at [19]) that the fact that the victim was a young child meant that he was particularly vulnerable because he was defenceless, and this was treated as an aggravating factor. Chan CJ also stated (at [18]) that where death, which was "generally the most serious consequence of any offence", was caused, the imposition of the maximum sentence might be warranted:

> Death, it goes without saying, is generally the *most serious consequence of any offence* and may warrant the imposition of a maximum sentence: see, for instance, *PP v Fazely bin Rahmat* [2003] 2 SLR(R) 184, where the (then) maximum sentence

> under s 325 of the Penal Code of seven years' imprisonment and 12 strokes of the cane was imposed for each of the two offenders convicted of causing grievous hurt to a victim for an assault (together with other gang members) on the victim which [led] to his death. But the consequence of death alone would not attract the maximum sentence without more. Factors such as the manner in which the death was caused, the relationship between the offender and the victim, the offender's state of mind or the offender's motives would also go towards the weighing of whether this particular instance fell within the worst category of cases for the offence in question. [emphasis added]

47 Having regard to the nature of the injuries caused, the circumstances in which they were inflicted (including the fact that the offender had intended to cause physical harm to the child and had in fact caused the child's death when he should have been caring for his welfare), the offender's lack of remorse and the absence of mitigating factors, Chan CJ was satisfied that the case before him fell into "the worst category of cases of causing grievous hurt" and accordingly imposed the maximum sentence for the s 325 charge (at [22]).

48 Next, we briefly consider *Public Prosecutor v Mohd Azhar Bin Ghapar* District Arrest Cases Nos 53650 of 2010 and others ("*Mohd Azhar*"), which was cited by the Prosecution. We do not regard this case as a useful precedent not only because of the absence of detailed grounds, but also because the sentences imposed did not differentiate between the varying degrees of seriousness of the injuries caused in the incidents that were the subject matter of separate charges against the offender. In *Mohd Azhar*, the offender faced, among other charges, two charges under s 325 of the Penal Code for voluntarily causing grievous hurt to his girlfriend's two-year-old child. The offending conduct that was the subject matter of one of the s 325 charges resulted in the child suffering an acute subdural haematoma which, in the event, ended her life. In respect of the other s 325 charge, the injuries inflicted were fractures of the child's ribs. Despite the patent difference in the seriousness of the injuries, the district judge imposed the *identical* sentence of seven years' imprisonment and six strokes of the cane

for each of the s 325 charges. In our judgment, this could not be correct in law, and for this reason, we also did not think the decision could have any precedential value.

49 Lastly, there is the more recent decision of *Public Prosecutor v Zaidah and Zaini Bin Jamari* District Arrest Cases Nos 942245 of 2015 and others ("*Zaidah & Zaini*"). This too is a sentencing decision without written grounds and so has little, if any, precedential weight. However, this decision does demonstrate that a sentence at the *highest end* of the permitted range of punishment may be warranted where the abuse leads to the death of the victim. The victim in *Zaidah & Zaini* was a two-year-old child in the custody of his mother, the first accused, and under the care of his mother's boyfriend, the second accused. Each offender faced, along with numerous charges of ill-treatment under s 5(1) of the CYPA, one charge under s 325 of the Penal Code for the physical abuse that led to the child's death from a head injury. For the s 325 charge, the first accused was sentenced to nine years' imprisonment, while the second accused was sentenced to eight years' imprisonment and 12 strokes of the cane. Presumably, the difference between the two offenders' imprisonment sentences was to account for the 12 strokes of the cane that the first accused was exempted from by reason of s 325(1)(*a*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC").

(2) Cases where non-fatal serious injury was caused

50 We turn now to examine the cases prosecuted under s 325 of the Penal Code where non-fatal serious injury was caused. We tabulate these cases below for ease of reference:

S/N	Case	Injury	Imprisonment sentence for s 325 charge
1	*Foo Ah Choo v Public Prosecutor* Magistrate's Appeal No 384 of 1992 ("*Foo Ah Choo*")	Perforations in stomach; injuries on forehead, cheek, abdomen, back and limbs; three teeth broken	Two years imposed by trial judge (offender's appeal dismissed and sentence enhanced to three years and six months)
2	*Cindy Chandra v Public Prosecutor* Magistrate's Appeal No 293 of 1996 ("*Cindy Chandra*")	Severe internal head injuries; mental retardation and visual loss	Four years (offender's appeal withdrawn)
3	*Public Prosecutor v Muhammad Yusof Bin Bachok* District Arrest Cases Nos 942168 of 2016 and others	Fracture of right rib, among 29 distinct injuries; hospitalisation for 20 days	Six years
4	*Public Prosecutor v Franklie Tan Guang Wei* [2016] SGDC 263 ("*Franklie Tan*"); Magistrate's Appeal No 9222 of 2016	Skull fracture and brain haemorrhage that necessitated emergency brain surgery to save child's life; neurosurgical follow-up treatment for up to two years	Six years (offender's appeal dismissed)

51 The first two cases in the above table involved offences prosecuted under s 325 of the 1985 edition of the Penal Code, which (as noted earlier) prescribed a maximum imprisonment term of seven years, while the last two cases were prosecuted under s 325 of the present edition of the Penal Code, which provides for a maximum imprisonment term of ten years.

52 We make three observations. First, the imprisonment sentences that were imposed in these cases ranged from three years and six months under the previous sentencing regime to six years under the present sentencing regime.

53 Second, we do not find the older cases relevant or helpful for sentencing purposes. For one thing, they are decisions without any evident reasoning to explain the court's considerations, and were decided more than 20 years ago (indeed, 25 years ago in the case of *Foo Ah Choo*) under a different sentencing regime which prescribed a lower maximum imprisonment sentence than that which currently applies. Further, based on the nature of the injuries sustained by the victims in the older cases, it seems to us that the sentences imposed in those cases might have been inadequate. For instance, in *Foo Ah Choo*, the offender used canes and a slipper to assault a two-year-old child. The assault was so severe that it caused the child to suffer a life-threatening injury in the form of a perforated stomach. The child also had injuries on her forehead, cheek, abdomen, back and limbs, and lost three of her teeth. In this light, and having regard to the extreme youth and vulnerability of the victim, it seems to us that the sentence of three years and six months (after being enhanced on appeal) might have been inadequate. Similarly, the sentence of four years' imprisonment in *Cindy Chandra* seems to us to have been unduly lenient having regard to the severity of the injuries suffered by the child in that case and the permanence of the harm that was caused: the child became mentally and visually impaired as a result of the abuse.

54 Third, we note that the trial judge's analysis in *Franklie Tan* rightly focused on the *severity of the injuries* suffered by the victim, who was just a year old at the time of the offences. The judge considered it aggravating that the injuries were "very severe" (at [10]), and inferred that considerable force had been used when the child was pushed off the bed and landed on his head,

resulting in a skull fracture that needed emergency brain surgery. After noting that the custodial sentences imposed in s 325 cases where the victims died as a result of their head injuries were in the region of seven to nine years' imprisonment (with 12 strokes of the cane where the offenders were male) (at [15]), the judge took into account the fact that the victim in *Franklie Tan* survived and concluded that a sentence of six years' imprisonment and six strokes of the cane was appropriate. The offender's appeal to the High Court was dismissed.

Indicative starting points based on the seriousness of the injury

55 In the light of the above review of the precedents, we turn to the sentencing approach to be taken in cases prosecuted under s 325 of the Penal Code. The primary sentencing objective in such cases is likely to be deterrence. Further, retribution may also be relevant as a sentencing consideration where heinous violence has been inflicted. In our judgment, we think that sentencing in such cases should be approached in a two-step process as follows:

(a) First, because the seriousness of the injury caused underscores the inherent mischief targeted by s 325, it is a good indicator of the gravity of the offence and can guide the court in determining the indicative starting point for sentencing.

(b) Second, after the indicative starting point has been identified, the sentencing judge should consider the necessary adjustments upwards or downwards based on an assessment of the offender's culpability and the presence of relevant aggravating and/or mitigating factors.

56 In our judgment, given the inherent mischief that underlies the offence under s 325, and considering that a more severe sentencing range is prescribed

for this offence (compared to the offence of voluntarily causing simple hurt under s 323) precisely because *grievous* hurt has been caused, the factor that should guide the court's determination of the indicative starting point for sentencing should be the *seriousness of the hurt caused* to the victim. As we have already noted, s 325 encompasses a broad spectrum of different forms of grievous hurt ranging from a simple fracture to death. We do not propose to set out a range of indicative starting points for each type of grievous hurt, but what is relevant for present purposes is that in a case where the grievous hurt takes the form of death (as in the case of the first charge against the Respondent), the indicative starting point should be a term of imprisonment of around eight years, which is close to the maximum imprisonment term of ten years; whereas in a case where the grievous hurt takes the form of multiple fractures of the type and gravity described in the sixth charge against the Respondent, the indicative starting point should be a term of imprisonment of around three years and six months. For the avoidance of doubt, we wish to make it clear that the indicative starting point might be higher or lower depending on the type and seriousness of the injuries caused. These indicative starting points may then be calibrated upwards or downwards in view of the relevant aggravating and/or mitigating factors.

57 In determining the above indicative starting points, we have taken into account the following considerations.

58 First, as we have noted, in general, because of the importance of the degree of harm as a sentencing consideration in grievous hurt offences under s 325 of the Penal Code, the indicative starting points should correspond to the seriousness of the injury caused to the victims. This should be assessed along a spectrum, having regard to considerations such as the nature and permanence of the injury.

59 Second, the court should have regard to the full breadth of the permitted sentencing range, and the indicative starting points should reflect this, while allowing room for the sentencing judge to make adjustments based on the offender's culpability and other relevant circumstances.

60 Third, we agree with Chan CJ's holding in *Firdaus* that death is generally the most serious consequence of any offence and may warrant the imposition of the maximum sentence in appropriate cases. Where death results from the infliction of severe physical violence on a young victim, this would warrant a sentence close to the statutory maximum. This is also consistent with the court's approach to fatal child abuse cases prosecuted under s 304(*b*) of the Penal Code as culpable homicide not amounting to murder, which carries a similar maximum imprisonment term of ten years. In s 304(*b*) cases that involve parents or caregivers causing the death of young children, the period of imprisonment imposed by our courts has generally been close to, if not set at, the maximum imprisonment term of ten years: see for instance, *Public Prosecutor v Mohd Ismail Bin Abdullah @ Nai Henry* Criminal Case No 37 of 1994 and *Public Prosecutor v Devadass s/o Suppaiyah* Criminal Case No 41 of 1997, in both of which the maximum sentence of ten years' imprisonment was imposed; see also *Teo Chee Seng* and *Public Prosecutor v Dwi Arti Samad* Criminal Case No 12 of 2000, where seven-year and eight-year imprisonment terms were imposed respectively. In *AFR*, where the offender's 23-month-old daughter died after the offender inflicted "disturbing brutal violence" on her, the offender's imprisonment term for a s 304(*b*) charge was enhanced on appeal from six years to the maximum ten years, along with ten strokes of the cane.

61 The sentencing framework which we set out here is not meant to be rigidly applied, and, as noted at [41] above, each case must be assessed based on its own particular facts. The indicative starting points should be adjusted

according to the facts of the particular case before the sentencing judge. This would allow sentencing judges to better calibrate sentences according to the circumstances of each case.

Adjusting for the offender's culpability – aggravating circumstances

62 As mentioned at [55(b)] above, the indicative starting point arrived at by the sentencing judge should be adjusted either upwards or downwards based on the judge's assessment of the offender's culpability, which entails a holistic assessment of the relevant aggravating and/or mitigating factors. We set out below some of the aggravating factors that would generally be relevant in this context:

(a) the extent of deliberation or premeditation;

(b) the manner and duration of the attack;

(c) the victim's vulnerability;

(d) the use of any weapon;

(e) whether the attack was undertaken by a group;

(f) any relevant antecedents on the offender's part; and

(g) any prior intervention by the authorities.

(1) Deliberation or premeditation

63 Where the facts of the case demonstrate a degree of deliberation or premeditation, the offender's culpability would generally be increased. If a weapon is used in the attack (see [67] below), the degree of premeditation involved in procuring the weapon may also be relevant. In this regard, we note

that physical child abuse cases are often committed out of anger or annoyance. The lack of premeditation in such situations may at most only amount to the absence of an aggravating circumstance, and not the existence of a mitigating circumstance.

(2) The manner and duration of the attack

64 The viciousness of the offender's actions may be inferred from the circumstances of the attack, such as the frequency and recurrence of the attacks, and the length of time over which the attacks are carried out. The focus here is not on the direct consequences of the attack, namely, the injuries inflicted, since that has already been properly taken into consideration at the first stage of the sentencing process when determining the appropriate indicative starting point (see [55(a)] above). Rather, the focus here is on the offender's culpability, and this will entail an inquiry into whether there was cruelty in the manner of the attack and whether the victim's agony was exacerbated by the manner in which the injuries were inflicted. For instance, in *Firdaus*, the offender's culpability was assessed to be high considering that the offender had (among other things) punched the three-year-old child in the face *several times* before grabbing him by the mouth and slamming him into the wall. And even after that, the offender did not stop, but instead continued to slap the child on his back.

(3) The victim's vulnerability

65 The victim's vulnerability is a seriously aggravating consideration. The greater the advantage which the offender enjoys over the victim and exploits, the greater his culpability. Such advantage need not only be physical, although this will often be the case in the context of young victims. And such advantage may be given additional aggravating weight where the victim's vulnerability is

also rooted in the relationship of trust and dependence that exists between the victim and the offender.

66 In *UI*, we noted (at [33]) that parents betray the *ultimate* relationship of trust and authority when they abuse their children, and that for this reason, a parent would typically receive a harsher punishment for such abuse (see [35] above). In a similar vein, in *AFR*, we observed (at [15]–[16]) a difference in sentencing between s 304(*b*) cases that involved *parents* causing the deaths of young children under their care and s 304(*b*) cases that involved *caregivers* doing the same. It was noted that the period of imprisonment imposed by our courts for the latter category of cases was "slightly shorter" than that imposed for the former category of cases, the maximum imprisonment sentence of ten years being common to both categories of cases.

(4) The use of a weapon

67 The use of a weapon to inflict grievous hurt will increase the offender's culpability. Where dangerous weapons are used, the offence may even be prosecuted under the aggravated offence of voluntarily causing grievous hurt by dangerous weapons or means under s 326 of the Penal Code, which carries a higher maximum sentence of 15 years' imprisonment or even life imprisonment and may also include a fine or caning. In addition, regard should be had to the nature of the weapon and the way it was used, and how these aggravate the offender's culpability.

(5) Group assault

68 Where the abuse takes place in a group setting with other co-offenders involved, this will enhance the offenders' culpability. This may be especially pertinent in child abuse cases involving more than one caregiver, such as *Zaidah*

& Zaini, where a two-year-old child's mother and her boyfriend abused the child on numerous occasions for more than a month on an almost daily basis. They had done so both separately as well as *together*. In cases where two or more offenders assault a defenceless child together, the sentence imposed on the offenders should be adjusted upwards to reflect their higher culpability.

(6) The offender's antecedents

69 The presence of relevant antecedents on the offender's part is an aggravating factor because it signals a greater need for specific deterrence: see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 ("*Tan Kay Beng*") at [14]. In this regard, previous convictions for voluntarily causing grievous hurt are not the only relevant antecedents. Where the offence involves a young victim, antecedents relating to other types of offences against such victims (which may range from ill-treatment offences under the CYPA to serious sexual offences against minors) may also be considered to be relevant. In addition, it is pertinent to consider the seriousness and the number of relevant antecedents.

(7) Prior intervention by the authorities

70 Lastly, we consider that the need for specific deterrence is also enhanced when an offender continues to abuse a young victim despite prior intervention by the CPS (as in the present case) or any other organisation that deals with child protection concerns.

Mitigating factors

71 We now outline the typical mitigating factors that are raised by offenders in cases prosecuted under s 325 of the Penal Code. These include:

(a) the offender's mental condition;

(b) the offender's genuine remorse; and

(c) the offender's personal financial or social problems.

(1) The offender's mental condition

72 Mitigating value may be attributed to an offender's mental condition in certain situations. The first issue in this context is whether the nature of the mental condition is such that the offender retains substantially the mental ability or capacity to control or restrain himself (see *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") at [28] and *Ang Zhu Ci Joshua v Public Prosecutor* [2016] 4 SLR 1059 at [3]). Hence, medical evidence to establish a *causal connection* between the mental condition and the commission of the offence will be important in persuading the court to give a diagnosis of a mental disorder significant mitigating value. The focus of the inquiry will be on whether the evidence establishes that the offender's mental responsibility for his criminal acts was substantially diminished at the time of the offence by reason of his mental condition. The sentencing principle of general deterrence may be accorded full weight in circumstances where the offender's mental condition is not serious or is not causally related to the commission of the offence and the offence is a serious one (see *Chong Hou En* at [24(c)] and *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [74]).

73 By way of illustration, in *Firdaus*, Chan CJ reasoned (at [22]) that the offence in *Public Prosecutor v Rosnani bte Ismail* District Arrest Case No 19936 of 2000 ("*Rosnani*") was less serious than the offences before him in *Firdaus* because the offender in *Rosnani* was mentally retarded and this mitigated her offence.

(2) The offender's genuine remorse

74 We have also generally considered that circumstances demonstrating the offender's genuine remorse may be accorded mitigating weight. This may be relevant in situations where a timely admission of guilt or cooperation with the authorities in their investigations reflects *genuine* remorse. However, an offender's plea of guilt should be given little weight if the evidence against him is strong and he has little choice but to plead guilty: see *Vasentha* at [71]. Similarly, the offender's cooperation with the investigating authorities should not be regarded as a strong mitigating factor if there is overwhelming evidence against him: see *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 at [12] and *Vasentha* at [73].

(3) The offender's personal financial or social problems

75 An often-cited factor raised by offenders relates to the difficult personal circumstances that they faced at the time of the offences. This will rarely, if ever, have mitigating value: see *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10] (in the context of the offence of giving false information to a public servant) and *Public Prosecutor v Osi Maria Elenora Protacio* [2016] SGHC 78 at [8] (in the context of the offence of criminal breach of trust). In the context of offences against young victims (as well as other vulnerable victims), this proposition applies with *even greater force* because the frustrations faced by a parent or caregiver due to his or her difficult personal circumstances can *never* justify or excuse the abuse of such victims. As we emphasised in *AFR* at [12]:

> … Any parent or caregiver who [inflicts violence on young children under his charge] *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]

Caning for cases prosecuted under s 325 of the Penal Code

76 In cases prosecuted under s 325 of the Penal Code, our courts have invariably imposed, in addition to imprisonment sentences, caning of *at least* six strokes where the offender in question is not exempted from caning under the CPC. As the authors of *Sentencing Practice* have noted (at p 266), caning "is also appropriate unless there are exceptional circumstances". Where violence has been inflicted on a victim, retribution is likely to be the principal sentencing consideration that warrants the imposition of caning: see *Sentencing Principles in Singapore* at paras 6.021 and 30.023, as well as *Amin Bin Abdullah v Public Prosecutor* [2017] SGHC 215 ("*Amin*") at [63]. In our judgment, where death is caused, a sentence of 12 or more strokes of the cane may be warranted; whereas where non-fatal serious injury is caused, a sentence of between six and 12 strokes of the cane may be considered.

Ill-treatment of young victims prosecuted under s 5 of the CYPA

77 We now consider the relevant sentencing considerations for the CYPA charges against the Respondent before turning to apply these principles to the present appeal. Section 5 of the CYPA provides as follows:

> **Ill-treatment of child or young person**
>
> **5.**—(1) A person shall be guilty of an offence if, being a person who has the custody, charge or care of a child or young person, he ill-treats the child or young person or causes, procures or knowingly permits the child or young person to be ill-treated by any other person.
>
> (2) For the purposes of this Act, a person ill-treats a child or young person if that person, being a person who has the custody, charge or care of the child or young person —
>
> (*a*) subjects the child or young person to physical or sexual abuse;
>
> (*b*) wilfully or unreasonably does, or causes the child or young person to do, any act which endangers or is likely

to endanger the safety of the child or young person or which causes or is likely to cause the child or young person —

(i) any unnecessary physical pain, suffering or injury;

(ii) any emotional injury; or

(iii) any injury to his health or development; or

(*c*) wilfully or unreasonably neglects, abandons or exposes the child or young person with full intention of abandoning the child or young person or in circumstances that are likely to endanger the safety of the child or young person or to cause the child or young person —

(i) any unnecessary physical pain, suffering or injury;

(ii) any emotional injury; or

(iii) any injury to his health or development.

(3) For the purpose of subsection (2)(*c*), the parent or guardian of a child or young person shall be deemed to have neglected the child or young person in a manner likely to cause him physical pain, suffering or injury or emotional injury or injury to his health or development if the parent or guardian wilfully or unreasonably neglects to provide adequate food, clothing, medical aid, lodging, care or other necessities of life for the child or young person.

(4) A person may be convicted of an offence under this section notwithstanding —

(*a*) that any actual suffering or injury on the part of the child or young person or the likelihood of any suffering or injury on the part of the child or young person was obviated by the action of another person; or

(*b*) the death of the child or young person in respect of whom the offence is committed.

(5) Subject to subsection (6), any person who is guilty of an offence under this section shall be liable on conviction —

(*a*) in the case where death is caused to the child or young person, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 7 years or to both; and

> (*b*) in any other case, to a fine not exceeding $4,000 or to imprisonment for a term not exceeding 4 years or to both.
>
> …

78 The earliest predecessor of the CYPA, the Children and Young Persons Ordinance 1949 (No 18 of 1949), was enacted in 1949 to provide for the rescue, care, protection and rehabilitation of children and young persons. Currently, s 5 of the CYPA, titled "Ill-treatment of child or young person", is located in Part II of the CYPA, which deals with the welfare and protection of children and young persons. Section 5 came into effect in 2001 and replaced the former s 4 of the Children and Young Persons Act (Cap 38, 1994 Rev Ed) ("the 1994 CYPA"); for present purposes, the two provisions are essentially the same.

79 Section 5 is an all-encompassing section targeted at all forms of ill-treatment of children and young persons. It covers the entire spectrum of child abuse ranging from neglect or emotional abuse to physical and sexual abuse, with the relevant harm ranging from physical or emotional injury to injury to the child's health or development. Although "emotional injury" is not defined in the CYPA, s 4(*g*), which furnishes an example of when a child or young person is in need of care or protection from such injury, sheds some light:

> **When child or young person in need of care or protection**
>
> **4.** For the purposes of this Act, a child or young person is in need of care or protection if —
>
> …
>
> (*g*) there is such a serious and persistent conflict between the child or young person and his parent or guardian, or between his parents or guardians, that family relationships are seriously disrupted, thereby causing the child or young person emotional injury;
>
> …

80 Under s 2(1) of the CYPA, a "child" is defined as a person under the age of 14 years, and a "young person", as a person who is between the ages of 14 and 16 years. Section 5(2) defines "ill-treatment", while s 5(3) expands on what "neglect" means. From the plain words of the provision, the operative mischief targeted by s 5 of the CYPA is physical or sexual abuse (s 5(2)(*a*)) and *wilful* or *unreasonable* harm to or neglect of young victims (ss 5(2)(*b*) and 5(2)(*c*) respectively).

81 The 1994 CYPA incorporated enhanced penalties for child abuse and neglect. Before the Children and Young Persons Act 1993 (Act 1 of 1993) repealed and re-enacted (with amendments) the Children and Young Persons Act (Cap 38, 1985 Rev Ed) ("the 1985 CYPA"), s 5 of the 1985 CYPA prescribed lower penalties for what was then termed "Cruelty to children and young persons". At the second reading of the Children and Young Persons Bill (Bill 38 of 1992), the then Minister for Community Development, Mr Yeo Cheow Tong, explained why the penalties were to be increased (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 449–450):

> The Children and Young Persons Bill …, while retaining most of the provisions of the existing CYP Act [*ie*, the 1985 CYPA], will incorporate several major changes to give the State wider powers to protect children at risk and to make the Act more relevant to present day needs. *Penalties are also being increased to a more appropriate level.* …
>
> …
>
> First, increased penalties. Mr Speaker, Sir, the quantum of fines and penalties has not been changed since the Act was enacted in 1949. For example, any person who causes a child to beg is liable on conviction to a fine of up to $250 or to imprisonment of three months, or to both. The penalties for offences against children in the existing CYP Act are now *too low to be a deterrent.* Under the Bill, penalties for offences have been greatly enhanced, especially for offences like child abuse

> and exploitation and contribution to the delinquency of children and young persons.
>
> …
>
> … [W]hat is worrying are the instances *where child abuse has resulted in the death of the abused child*. Between 1985 and 1988, there was an average of one death from child abuse each year. This increased to an average of two deaths a year for the past three years.
>
> The present penalty for both fatal and non-fatal cases of child abuse is a fine not exceeding $1,000 or … imprisonment for a term not exceeding two years, or … both.
>
> *These penalties are manifestly inadequate*. The Bill proposes to enhance the penalties to *strongly discourage such abuses of defenceless children*. In fatal cases, the Bill will increase the penalty to a fine not exceeding $20,000 or … imprisonment for a term not exceeding seven years, or … both. In non-fatal cases, the penalty will now be a fine not exceeding $4,000 or … imprisonment for a term not exceeding four years, or … both.
>
> [emphasis added]

82 At the same Parliamentary session, several other Members of Parliament endorsed this proposed amendment. The then Deputy Speaker, Mr Abdullah Tarmugi, stated (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 452–453):

> … [W]e should continue to find ways to diminish further, if not altogether eliminate, acts of abuse of children and young persons in our society. Therefore, this Bill is welcomed. …
>
> I am particularly glad to note that penalties for offences against children have been enhanced so that they may act as deterrence. The quantum of fine, for example, has been increased and so have been the jail terms. The quantum of fines has not changed since the Act was enacted in 1949, as mentioned earlier. What was a deterrent sum then … is a painless sum to be of any deterrence now. *This is especially so for abuses which lead to the death of children*. While such penalties may not be the best way of stopping child abuse, it is nevertheless an effective one in most cases.
>
> [emphasis added]

83 Mrs Yu-Foo Yee Shoon also alluded to the principle of general deterrence as the main consideration behind the proposed increased penalties (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at col 454):

> The new provisions will help deter potential child abusers. They will help to protect our children from people who exploit or are cruel to them in any way. The passage of this Bill will send a strong message to these people that such barbaric behaviour will be met with fitting punishments.

84 In these Parliamentary statements, the clear abhorrence of child abuse is evident, as is the importance of imposing harsh sentences to deter potential child abusers, especially where the abuse leads to the death of a child or young person. This forms the background to the distinction that is now drawn in s 5(5) of the CYPA in the range of permissible sentences for fatal and non-fatal child abuse cases, as well as the increase in the maximum imprisonment sentence from the original maximum of two years' imprisonment under s 5 of the 1985 CYPA.

85 It follows that the sentencing considerations of deterrence and retribution are just as relevant in the context of child abuse offences prosecuted under s 5 of the CYPA as in those prosecuted under s 325 of the Penal Code. We also consider that factors similar to those outlined at [63]–[75] above would be relevant in deriving the appropriate sentence on the facts of each case.

86 For non-fatal child abuse cases, the offender is liable under s 5(5)(*b*) of the CYPA to a fine not exceeding $4,000, or imprisonment for a term not exceeding four years, or both. We observe that in the relevant precedents cited by the parties that involved physical violence to children or young persons, the courts invariably imposed a term of imprisonment of *at least* six months for offences prosecuted under s 5 of the CYPA. We also note that in general, offenders who *wilfully* inflict injury on a child or young person may be regarded

as being more culpable than offenders who act *unreasonably* in doing so, and should therefore receive harsher sentences than the latter category of offenders: see *Public Prosecutor v Kusrini Bt Caslan Arja* [2017] SGHC 94 at [7], where Tay Yong Kwang JA opined that the case before him, which involved three *unreasonable* acts of ill-treatment of a child, was not as grave as cases where pain and suffering were *wilfully* inflicted on a child.

87 In that light, we turn to our decision in the present appeal.

Our decision

Our reasons for disagreeing with the Judge's sentences

Both general and specific deterrence were relevant in this case

88 We disagreed with the sentences imposed by the Judge for several reasons. First, we were satisfied that the Judge erred in finding that the sentencing objective of deterrence was not relevant in this case. In our judgment, both general and specific deterrence were relevant sentencing considerations.

89 Deterrence, as a general sentencing principle, aims to signal to and create an awareness in the public and among potential offenders that a particular type of offending behaviour will not be condoned, and that punishment for such behaviour will be certain and unrelenting: see *Tan Kay Beng* at [31]. There are two aspects to deterrence: deterrence of the offender and deterrence of likely offenders, corresponding to specific and general deterrence respectively: see *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [18].

90 In the court below, the Judge accepted that retribution was a relevant sentencing principle, but did not accept that deterrence was a sentencing

principle which could feature significantly in the present case because the Respondent had committed the offences out of anger and on the spur of the moment (see the GD at [25]–[27]; see also [27] above). He was of the view that where the court was dealing with "crimes of passion", it might often be inappropriate to invoke deterrence as a sentencing consideration given that a person who was acting on the passion of the moment might not be susceptible to deterrence by considering the consequences that were likely to ensue. However, the Judge also accepted (at [26] of the GD) that it was "uncontroversial" that offences against vulnerable victims "normally warrant general deterrence". We therefore understand his comments on the inapplicability of the principle of deterrence as being directed at specific deterrence.

91 There are three reasons, in our judgment, why the Judge erred in concluding that specific deterrence was not relevant in this case.

92 First, we disagree with the Judge's view that the Respondent's offences were "crimes of passion" that were committed on the spur of the moment. We elaborate on this below at [109]–[114].

93 Second, even if the circumstances of this case did render the Respondent's offences "crimes of passion", the mere fact that an offence is committed out of anger does not in itself suggest that there is no room for considering the applicability of deterrence as a sentencing objective. Our jurisprudence, as rightly pointed out by the Prosecution, in fact goes the other way in viewing certain crimes committed out of anger as warranting general deterrence. Such a policy can be seen in the context of road rage cases, where the court is mindful of the need to deter people from resorting to violence on the roads on the slightest provocation (see *Public Prosecutor v Lee Seck Hing*

[1992] 2 SLR(R) 374 at [11]–[12]), as well as in the context of cases involving the abuse of domestic workers (see *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [58]–[59]).

94 Third, the fact that an offence is committed out of anger does not mean that the offender was not able to make rational decisions at the material time. The law expects a person to be in control of his emotions and conduct even in moments of grave anger, and to face the consequences of failing to do so. Deterrence is concerned with making it clear what those consequences are likely to be even if the proscribed act is done in a moment of anger.

95 The principle of deterrence treats offenders and potential offenders as rational actors who are capable of acting prudently, and who are therefore likely to see the threat of punishment as a reason for not breaking the law: see *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [26]. In *Law Aik Meng*, it was noted (at [22]) that deterrence might not be as effective in certain situations where the offender was thought to be "undeterrable":

> … [D]eterrence probably works best where there is a *conscious* choice to commit crimes. Nigel Walker and Nicola Padfield in *Sentencing: Theory, Law and Practice* (Butterworths, 2nd Ed, 1996) … at p 99 explain the theory of "undeterribility". ***Pathologically weak self-control, addictions, mental illnesses and compulsions*** are some of the elements that, if possessed by an offender, may constitute "undeterribility", thus rendering deterrence futile. Such elements seem to involve some form of impulse or inability to make proper choices on the part of the offender … [emphasis in original in italics; emphasis added in bold italics]

96 Drawing an analogy with when a mental condition would give rise to "undeterribility", the High Court in *Chong Hou En* at [28] and *Chan Chun Hong v Public Prosecutor* [2016] 3 SLR 465 at [73] held that an offender should be deemed to be capable of being deterred by punishment and should therefore face

the consequences imposed by the law as long as it could be shown that "the offender's ability to appreciate the nature and consequences of his actions" and "to stop himself from committing the criminal act" had not been substantially impaired. This is an important point because it requires the court to go behind assertions of temper and rage and analyse: (a) whether there is in fact expert evidence to establish an inability on the part of the offender to make the appropriate choices; and also (b) whether, on the facts of the case, the offender was labouring under such an inability at the material time.

97 There is a further point which was noted in *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [114], where we affirmed the following observations of Prof A J Ashworth in "The Doctrine of Provocation" [1976] CLJ 292 at p 319:

> It is also arguable that no one should be provoked into a violent rage by a young child, and that the defence of provocation should not be available to a person who uses serious violence and kills in such circumstances. …

98 In our judgment, it would generally be untenable to contend that deterrence as a sentencing consideration has been displaced where an offence is committed out of anger, absent clear evidence that the offender was unable to stop himself from committing the act in question. Indeed, as we emphasised in *AFR* at [41], anger should not be accepted as a mitigating factor in child abuse cases. Thus, leaving aside the possible relevance of the Respondent's personality aberrations, we are satisfied that both general and specific deterrence, in addition to retribution, should feature prominently as sentencing considerations in this case.

The Judge placed undue weight on the alleged mitigating factors

99 Another reason why we disagreed with the sentences imposed by the Judge was that in our view, the Judge placed undue weight on certain alleged mitigating factors which were either irrelevant or not in fact made out. Relying on the Respondent's personality aberrations coupled with various other stress factors, the Judge concluded that the offences in this case were committed on the spur of the moment and that the Respondent's culpability was therefore reduced. For the reasons that follow, we agreed with the Prosecution that the Judge placed undue weight on these alleged mitigating factors.

(1) The Respondent's personality aberrations should not have been treated as a mitigating factor

100 Dealing first with the relevance of the Respondent's personality aberrations (as set out at [22] above), we considered that the Judge erred in regarding these personality aberrations as having mitigating value.

101 In the proceedings below, after the Respondent pleaded guilty, a Newton hearing was conducted to address the specific issue of whether the Respondent was suffering from a mental disorder that caused her to injure her own child as she did. The Prosecution's position was that the Respondent only had personality aberrations which did not affect her ability or capacity to control herself. Citing Dr Gupta's evidence, the Prosecution submitted that these personality aberrations were *personality traits* rather than symptoms or signs of Asperger's Syndrome or any other mental or personality disorder.

102 As we mentioned earlier at [28] above, the Judge found that the Respondent was not suffering from any recognised mental disorder at the time of the offences, but he nonetheless drew a causal link between her personality

aberrations and her offending conduct (see the GD at [35]). In this regard, he relied on the last paragraph of Dr Gupta's report dated 2 September 2014 (see [22] above), which expressed the opinion that the Respondent had:

> … several personality aberrations (recurrent suspicions regarding [the] sexual fidelity of [her] spouse/partner, tendency to act impulsively, very low tolerance [for] 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.

103 In our judgment, and with respect, the Judge erred in his appreciation of the proper context of Dr Gupta's expert opinion. We reiterate that it was common ground that the Respondent's various personality aberrations as identified in Dr Gupta's report *did not amount to an established mental disorder*. When Dr Gupta was asked by defence counsel what caused these personality aberrations, he answered that it was not possible to say. Dr Tan's evidence was similarly inconclusive as to the causes of these personality aberrations. In the circumstances, it was impossible to conclude, without more, that these personality traits should reduce the Respondent's culpability. Individuals react differently when faced with stress factors. To treat as a mitigating circumstance an offender's tendency to be aggressive and/or to be prone to blame others when facing stressful situations even though this does not amount to any recognisable mental disorder and *did not substantially impair the offender's mental responsibility* for his conduct at the material time would seem to reward appallingly bad social behaviour. The mitigating value of a psychiatric condition depends on, among other factors, the existence of a causal connection between that condition and the commission of the offence (see *Chong Hou En* at [28]). In the present case, the Respondent simply had *no* mental disorder, and the mere fact that she was aggressive and yielded to that aggression does not mean that she lost control of her impulses when she

committed the offences or that her aggressive personality should in some way be treated as a mitigating circumstance.

104 It is not illogical to draw a *causal link* between an offender's personality trait of readily resorting to aggression in stressful situations and the offender's criminal conduct in giving vent to his aggression and using violence. However, to accord *mitigating value* to such a personality trait is erroneous. To put it another way, the Respondent's aggressive personality might help to *explain* what she did when she committed the offences, but it in no way *excuses* or even reduces her culpability for abusing and ill-treating A.

105 In this regard, we find the case of *R v Murukaiyan Rasoo* [1957] 1 MLJ 26 ("*Murukaiyan Rasoo*") illustrative of the approach which a sentencing court should take towards an offender's alleged personality traits. In that case, which involved a charge of voluntarily causing grievous hurt, the trial judge had imposed what the appellate court described as "a very light sentence" – namely, binding over for one year in the sum of $500 – on the offender for his knife attack on his ex-fiancée. The trial judge decided on this sentence after taking into account "the personality of the accused" and the fact that he was "highly sensitive and emotional". On appeal by the Prosecution against the sentence, the offender's counsel submitted that the sentence should not be enhanced because the offender suffered from "some temperamental defect". Whitton J rejected this argument, noting that there was no suggestion that the offender suffered from a mental disorder, and that the medical expert had merely testified that the offender was "emotionally immature". Whitton J thus allowed the Prosecution's appeal and enhanced the sentence to six months' imprisonment.

106 The situation in the recent decision of *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 ("*Chong Yee Ka*") was converse to that in

Murukaiyan Rasoo. In *Chong Yee Ka*, See Kee Oon J departed from the sentencing precedents (at [86]) and imposed a fine instead of a custodial sentence in respect of three charges of voluntarily causing hurt. He did so in the light of "a diagnosis of psychiatric disorder of sufficient severity as to significantly diminish the offender's culpability" (at [86]). See J rightly pointed out (at [80] and [82]) that it would not be practicable to specify precisely how substantial the impairment of an offender's mental state would have to be in order to warrant consideration as a mitigating factor because each case should be carefully considered within its factual matrix. However, he helpfully framed the inquiry as "whether the disorder(s) in question can be said to have contributed so significantly to the offending conduct that it diminishes the offender's capacity to exercise self-control and restraint, and hence reduces her culpability in the circumstances" (at [82]).

107 In *Chong Yee Ka*, it was *undisputed* that the offender had been suffering from postnatal depression linked to caregiver stress and multiple family-related stress factors. See J thus accepted (at [74]) that the offender's difficult personal circumstances rendered her "more prone to impulsive, unpredictable and irrational acts including those involving violence to the victim as well as … acts of self-harm". Unlike the present case, both the Prosecution's and the Defence's experts in *Chong Yee Ka* had diagnosed the offender as having depression of moderate severity. In the circumstances, See J found (at [64]) that the offender's psychiatric condition "would have *caused* her to have difficulties controlling her emotions and impulses and would have contributed to her loss of self-control that led to the commission of the offences" [emphasis added]. It may be noted that the offender in that case, apart from pleading guilty and demonstrating her remorse, had sought treatment for her condition, taking cognisance of her wrongdoing.

108 For these reasons, we were satisfied that the Judge erred in taking into account the Respondent's personality aberrations as a mitigating factor.

(2) The Respondent's offences were not "crimes of passion"

109 We turn now to the Judge's characterisation of the Respondent's offences as "crimes of passion" which, in his view, should be given mitigating weight. We did not agree. We touched on this earlier at [91]–[96] above in considering whether it is legitimate to disregard deterrence as a sentencing consideration when an offence is committed out of anger. Here, we consider whether there was any ground to view the Respondent's offences as "crimes of passion" and, on that basis, accord mitigating value to this factor. In our judgment, while there might well have been no premeditation involved in the present case, taking that at its highest, it would only mean the absence of an aggravating circumstance and not the existence of a mitigating circumstance (see [63] above). On the evidence, the assaults which formed the subject matter of the charges against the Respondent were not the actions of a person who had lost her senses. Instead, the Respondent's attacks on A were responses to specific acts of A, and were cruel and vindictive.

110 With regard to the third charge, the Respondent admitted pushing A, causing him to fall backwards and hit the back of his head against a television console. She had evidently done so because she was frustrated that A failed to recite certain numbers that she had asked him to (see [13] above). There was no evidence to suggest that she had lost her senses to the extent of being in a state of hot-blooded irrationality on account of A's failure to recite those numbers.

111 As to the fourth charge, the Respondent admitted kicking A in the waist area after he had moved his bowels on the floor. This assault was not even an immediate reaction. It was only *after* A had cleaned himself up and gone to the

Respondent that she kicked him. After A fell due to her kick, the Respondent then stepped on his stomach with both feet *for a few seconds* before moving away (see [14] above). These actions could not be said to be acts of "passion"; they were simply acts of vindictiveness.

112 In respect of the sixth charge, the Respondent, irritated by A's inability to follow her instructions as she attempted to teach him the alphabet, pushed him. When A failed to comply with her further instructions, she pushed him a second time, causing him to fall, and also stepped on his ribs. A then asked if he could draw, so the Respondent gave him some paper. But A scribbled on the sofa instead. In anger, the Respondent proceeded to twist and pull his hand very hard. This series of actions did not suggest that the Respondent had committed these acts (or any of them) on the spur of the moment. On the contrary, the Respondent's actions were deliberate responses to particular actions by A. There was nothing to suggest that she had lost control.

113 Similarly, in relation to the assaults on 1 August 2014 which resulted in A's death (the subject matter of the first charge), *four* episodes of abuse were carried out *intermittently* over *about two hours* from approximately 4.30pm to 6.30pm. The Respondent had ample time to cool down during this period even if she had been extremely angry with A. This included the period when she simply ignored A for a time and when she went to take a shower in between the episodes. The Respondent even had the presence of mind to remember to pick her daughter up, and had asked A if he wanted to accompany her or stay at home (see [18] above). In our judgment, and with respect, the Judge failed to give appropriate consideration to the entire sequence of events and thus erred in holding that the Respondent's assaults on A on 1 August 2014 were committed on the spur of the moment.

114 It is also pertinent that the Respondent told Dr Gupta that she had committed the assaults to "discipline" A. This intention to "discipline" A is borne out in a note that the Respondent wrote to her then boyfriend on 2 July 2014, approximately a month before the last instances of abuse on 30 July and 1 August 2014. In that note, the Respondent said that she taught A his homework and "discipline [*sic*] him". Having regard to the nature, timing and frequency of the Respondent's violent attacks on A, we reject any suggestion that these assaults were not deliberate. They were certainly not spontaneous and irrational reactions by the Respondent in a moment of a total loss of control.

(3) The Respondent's alleged inability to cope with her problems was not an excuse

115 Finally, we are not persuaded that the Respondent's alleged inability to cope due to her financial and social problems could be viewed as a mitigating factor. As we have observed above (at [75]), the frustrations faced by a parent or caregiver due to difficult personal circumstances can never justify or excuse the abuse of young victims.

116 In the circumstances, we disagreed with the Judge's view that there were relevant mitigating factors in the present case.

The Judge failed to give sufficient weight to the relevant aggravating factors

117 In fact, we considered that the gravity of the Respondent's offences (and hence, her culpability) was aggravated by several factors that, in our respectful view, the Judge did not accord sufficient weight to.

118 First, there was the extreme youth of A. At the time the offences were committed, A was between two and four years of age. Although the Judge appeared to recognise the young age of A as an aggravating factor (see the GD

at [24]), he reasoned that to the extent that this factor already presented itself in the precedent cases, it did not warrant an increase in the sentences imposed in those cases (see [26] above). We note, however, that the victims in the precedents cited to the Judge were of varying ages ranging from two to 12 years. In general, the younger the victim, the more defenceless he or she would be (see, in this regard, [37] and [65] above). Here, the extreme youth of A was a seriously aggravating factor, but it was not adequately appreciated by the Judge.

119 Second, the Respondent, as the biological mother of A, had a particular duty to protect him. The betrayal of this critical relationship of trust and dependence was a separate and seriously aggravating factor. As we stated in *UI* at [33] (see [35] above), a parent who betrays that relationship and harms his or her child will generally stand at "the *furthest* end of the spectrum of guilt" [emphasis in original]. The Judge, however, appeared to have overlooked this.

120 Third, the Judge failed to give sufficient weight to the fact that the Respondent's pattern of conduct as a whole pointed to cruelty towards a defenceless child. The degree and the duration of the violence inflicted on A were important in assessing the Respondent's culpability (see [64] above). We have already pointed out that a high degree of violence and force was directed by the Respondent against A. On several occasions, A was already *on the floor* after being hit or pushed by the Respondent when she then proceeded to step on his knees, ribs or stomach. The extent of the force that she used was also clear. On the evening of the day when the fatal assaults took place, the Respondent choked A with her right hand and *lifted him off the ground* against the wall. She also pushed A on the chest on several occasions with such force that he fell and hit his head either on the ground (see the first and sixth charges) or against a television console table (see the third charge). In addition, in the assault in

March 2012 (the subject matter of the sixth charge), the Respondent twisted and pulled A's hand so hard that, among other things, his left elbow was fractured. Apart from the viciousness of the violence inflicted on A, the abuse in 2014 was protracted and occurred over a sustained period from June until 1 August 2014.

121 Not only did the Respondent's heinous and violent conduct cause the death of a helpless child, the post-mortem examination of A revealed, in addition to the fatal head injury (arising from *six* discrete impact sites on the head), *43 other external injuries* to A. Four of them were old scars on his forehead, chin, head and neck. The rest were *recent* injuries consisting of abrasions and bruises all over A's body – on his forehead, chin, jaw, scalp, ears, neck, shoulder, chest, back, arms, hands, knees and left foot. Five areas of internal haemorrhage were also found in his tissues. The pain suffered by A must have been unspeakably severe. The extreme degree of violence and force that the Respondent inflicted on her defenceless son did not appear to have been given sufficient consideration by the Judge: nothing was said in the GD about the viciousness of the Respondent's acts of abuse or the severity of the injuries suffered by A.

122 Lastly, the prior intervention of the CPS in between the episodes of abuse in March 2012 and 2014 was also an aggravating factor (see [70] above). The Respondent had previously been investigated for inflicting non-accidental injuries on A, and it was barely *a few months after* A's case was closed by the CPS on 5 February 2014 (see [11] above) that the Respondent started to ill-treat A again in June 2014. Yet, the Judge did not seem to have regarded this as an aggravating factor at all.

The sentences for the s 325 charges enhanced

123 Having considered the relevant aggravating and mitigating factors in the present case, we turn now to the appropriate sentences for the various charges against the Respondent. We first deal with the two charges under s 325 of the Penal Code, the first and sixth charges.

The first charge

124 For the first charge, given that the grievous hurt caused took the form of death, we were satisfied that the appropriate imprisonment sentence should be at the high end of the prescribed range. Based on the guidelines which we set out earlier (at [56] above), the indicative starting point is a sentence of around eight years' imprisonment. In our view, this should be adjusted upwards to nine years' imprisonment in this case, taking into account the Respondent's high degree of culpability as well as the various aggravating factors that we identified at [118]–[122] above. In particular, we took into account: (a) the Respondent's position as the mother of A; (b) the extreme youth of A; (c) the viciousness of the violence inflicted; and (d) the extended period of time over which the events on 1 August 2014 unfolded.

125 Further, in calibrating the appropriate sentence, we considered it relevant to have regard to the fact that the Respondent would not be caned by virtue of s 325(1)(*a*) of the CPC. The Prosecution had highlighted in the court below that imprisonment coupled with between six and 12 strokes of the cane had previously been imposed in grievous hurt cases where the victim either died or suffered "very serious injuries". Although the Prosecution sought an enhancement of the Respondent's imprisonment sentence in lieu of caning, the Judge did not address this.

126 As the Respondent was exempted from caning, the Judge was empowered to enhance her sentence by up to a maximum of 12 months' imprisonment under s 325(2) of the CPC. In *Amin*, a three-judge panel of the High Court set out the approach to be taken by a court when determining whether an offender's sentence should be enhanced by reason of the offender's exemption from caning, and if so, how the extent of such enhancement should be determined.

127 In the present case, we considered that there were grounds for such enhancement. As a woman, the Respondent would have known that she fell into one of the categories of offenders exempted from caning. Moreover, we considered that the sentencing principles of both deterrence and retribution featured significantly in this case as it involved grave violence against a young victim who died from the injuries inflicted. In the circumstances, we were satisfied that an additional term of imprisonment was called for to compensate for the lost deterrent effect of caning (see *Amin* at [67]).

128 Earlier, we stated that in fatal cases prosecuted under s 325 of the Penal Code, a sentence of 12 *or more* strokes of the cane may be warranted (see [76] above). In the light of the substantial aggravating factors which featured in this case and which we have already recounted (such as the extreme youth of A, the fact that the Respondent was his biological mother and the Respondent's vicious cruelty towards a defenceless child), we would have imposed 14 strokes of the cane on the Respondent if she had not been exempted from caning under s 325(1)(*a*) of the CPC. Based on the indicative guidelines provided in *Amin* (at [90]), an additional term of imprisonment of between six and nine months was called for. In the circumstances, we were of the view that an enhancement of the Respondent's imprisonment sentence for the first charge by six months was

warranted. We therefore increased the imprisonment sentence for this charge from seven years to nine years and six months.

The sixth charge

129 As for the sixth charge, we increased the sentence from two years' imprisonment to four years' imprisonment. We earlier stated that the indicative starting point for offences prosecuted under s 325 of the Penal Code involving non-fatal serious injuries and multiple fractures of the type and gravity encountered in this case is an imprisonment term of around three years and six months (see [56] above). We were of the view that this should be adjusted upwards in the Respondent's case to four years' imprisonment given the aggravating factors present.

130 In relation to the sixth charge, the violence inflicted on A, who was merely two years and five months old then, was, as we stated at [112] above, unjustified and vicious. A's injuries after this first reported instance of abuse in 2012 were serious: he was found to have multiple fractures (on his left elbow, left calf and right eighth to eleventh ribs), haematomas on his forehead and the back of his head, various small healing bruises on various parts of his body, as well as other healed linear scars on his lower legs and lower abdomen (see [9] above). Further, the especially young age of A at that time was a relevant consideration.

The sentences for the CYPA charges left undisturbed

131 We turn to the third and fourth charges for ill-treating A, which were brought under s 5(1) of the CYPA and punishable under s 5(5)(*b*) of that Act.

132 We decided not to disturb the sentences imposed for these two charges because, in our judgment, the agreed Statement of Facts did not allow us to draw any conclusion as to the precise nature and seriousness of the injuries that were inflicted on A in relation to these charges. There were no accompanying medical reports or details of these injuries. As we pointed out earlier, the sentence imposed must be sensitive to the facts of the case and should reflect a proper appreciation of all the circumstances of the case, including the nature of the harm caused and the seriousness and permanence of the injuries inflicted. In the absence of detailed information on these matters, we decided that the sentences imposed by the Judge for the third and fourth charges should not be disturbed.

The aggregate sentence

133 With regard to the aggregate sentence, we were satisfied that in the present circumstances, the Prosecution was correct to urge us to order the sentences for the first, fourth and sixth charges to run consecutively so as to make an aggregate sentence of 14 years and six months' imprisonment.

134 Ordering the sentences for these three charges to run consecutively would be in line with the one-transaction rule and the totality principle (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [25]). Where the one-transaction rule is concerned, these three charges involved distinct offences. The acts of abuse which formed the subject matter of these charges were committed on different days, with the first and sixth offences committed almost two and a half years apart, and the CPS was involved in the intervening period.

135 As for the totality principle, the first limb of this principle examines whether "the aggregate sentence is substantially above the *normal* level of sentences for the most serious of the individual offences committed" [emphasis

in original]: see *Shouffee* at [54], citing Prof D A Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at pp 57–58. In *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636, we clarified (at [79]) that in determining the "normal level" of sentences for this purpose, the court should look at the *range* of sentences normally imposed for the most serious of the individual offences rather than a specific sentencing benchmark or starting point. With regard to the second limb of the totality principle, this assesses whether the effect of the aggregate sentence is "crushing and not in keeping with [the offender's] past record and … future prospects" (see *Shouffee* at [57]).

136 In our judgment, the imposition of consecutive sentences for the first, fourth and sixth charges against the Respondent, with an aggregate sentence of 14 years and six months' imprisonment, was, on the whole, proportionate to the gravity of her offences and her high degree of culpability. As we indicated at [56] above, the normal imprisonment sentence for a fatal case prosecuted under s 325 of the Penal Code should range from the indicative starting point of around eight years' imprisonment to, in the worst category of cases, the maximum term of ten years' imprisonment. An aggregate imprisonment sentence of 14 years and six months in the Respondent's case was hence not so much higher than the relevant range as to render it "crushing".

Conclusion

137 For these reasons, we allowed the Prosecution's appeal, and enhanced the sentence for the first charge to nine years and six months' imprisonment and the sentence for the sixth charge to four years' imprisonment. We left the sentences for the third and fourth charges undisturbed at six months' and a year's imprisonment respectively.

138 We also ordered the sentences for the first, fourth and sixth charges to run consecutively, and the sentence for the third charge to run concurrently. This resulted in an aggregate sentence of 14 years and six months' imprisonment, backdated to 2 August 2014, the date of the Respondent's arrest.

Coda: Law reform of offences against vulnerable victims

139 The law has always taken a strong stance on crimes against vulnerable victims. Our courts condemn such offences by considering the victim's vulnerability to be an aggravating factor which is relevant for sentencing purposes. This, however, may not be sufficient. We therefore invite Parliament to consider affording the courts the power, when dealing with such offences, in particular, those against children and young persons, to enhance the permitted punishment to one and a half times the prescribed maximum penalty for certain offences.

140 This approach of enhancing the permitted sentencing range by enacting legislation that identifies a certain class of criminal action as deserving of harsher punishment than similar criminal conduct is not new. Parliament has enacted such legislation in relation to certain offences against foreign domestic workers (for instance, voluntarily causing either hurt or grievous hurt to, or wrongfully confining such workers) in order to send a clear signal to employers that the Government takes a serious view of foreign domestic worker abuse: see s 73 of the Penal Code and *Singapore Parliamentary Debates, Official Report* (20 April 1998) vol 68 at cols 1923–1925. Parliament made this legislative amendment because foreign domestic workers were recognised as being "more vulnerable to abuse" by employers and their immediate family members, and because the number of such cases of abuse had been on the rise.

141 A similar regime of enhanced penalties has also been imposed for racially or religiously aggravated offences: see s 74 of the Penal Code and *Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 83 at col 2183.

142 Recently, the MSF conducted a public consultation on a draft Vulnerable Adults Bill which proposed (among other things) inserting a new s 74A in the Penal Code to provide for enhanced penalties of up to one and a half times the permitted sentencing range for certain offences against vulnerable adults. Vulnerable adults are defined in this draft Bill as individuals who are: (a) 18 years of age or older; and (b) unable, by reason of mental or physical infirmity, disability or incapacity, to protect themselves from abuse, neglect or self-neglect. This proposed change is entirely consistent with our call for the courts to be afforded the discretion to enhance sentences for certain offences against vulnerable victims, especially children and young persons.

143 In the present case, *if* there had been such a provision affording us this discretion, we would not have hesitated to enhance the Respondent's sentence for the first charge by one and a half times given the gravity of that offence and the significant aggravating factors present.

Sundaresh Menon	Tay Yong Kwang	Steven Chong
Chief Justice	Judge of Appeal	Judge of Appeal

Kow Keng Siong, Tan Zhongshan, Quek Jing Feng and Soh Weiqi (Attorney-General's Chambers) for the appellant;

Sunil Sudheesan, Diana Ngiam and Joel Ng (Quahe Woo & Palmer LLC) for the respondent.
