

Public Prosecutor v ACI
[2009] SGHC 246

Case Number : CC 41/2009
Decision Date : 29 October 2009
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Amarjit Singh, Sharmila Sripathy-Shanaz and Geraldine Kang (Attorney-General's Chambers) for the prosecution; Ramesh Tiwary (Ramesh Tiwary) (briefed) for the accused
Parties : Public Prosecutor — ACI

Criminal Law – Attempt to commit culpable homicide – causing grievous hurt – sections 326 and 308 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Sentencing Principles – Mitigation – Whether sentence to run consecutively or concurrently

29 October 2009

Lee Seiu Kin J:

1 The accused is a 52 year old male. On 22 September 2009, the accused pleaded guilty to two charges as follows:

(1) That you, **[ACI]**, on 7th November 2008, at or about 1.30 p.m., on the 3rd floor of [XXX], Singapore, attempted to commit culpable homicide not amounting to murder of one [B] (F/51 years old) and in the said attempt did acts towards the commission of the offence, to wit, you attacked her with a chopper and threw her over the 3rd floor common corridor parapet wall of the said block, thereby causing her to plunge to the ground floor, with the intention and under such circumstances that if by the said acts you had caused the death of the said [B] you would have been guilty of culpable homicide not amounting to murder and by the said acts you did cause grievous hurt to the said [B], and you have thereby committed an offence punishable under section 308 of the Penal Code, Chapter 224.

(2) That you, **[ACI]**, on 7th November 2008, at or about 1.30 p.m., on the 3rd floor of [XXX], Singapore, did voluntarily cause grievous hurt to one [C] (M/14 years old), to wit, by slashing his left wrist and left forearm with a chopper, an instrument for cutting, thereby causing him to be, during the space of 20 days, unable to follow his ordinary pursuits, and you have thereby committed an offence punishable under section 326 of the Penal Code, Chapter 224.

2 The accused agreed to the following statement of facts tendered by the prosecution:

The accused

1 The accused is [ACI], NRIC No: S[XXX], Male/52 years (DOB: XXX), a Malaysian holding Singapore permanent residency. At the time of the offence he was involved in selling bird nest products jointly with [B] ("**Victim 1**"), although the accused had managed coffee shops or worked as a cook for most of his working career. The accused is married to [D], 53 years old, a Singapore citizen now working as sales promoter. They have two children; a son

aged 21 years who is doing his national service in the Navy and a 23 year old daughter.

2 Sometime in 2006, the accused began having an affair with Victim 1. The accused was then managing his own coffee shop business in Toa Payoh and, he was also supporting Victim 1 and her children financially. However, after the accused's coffee shop was re-possessed by the Housing and Development Board (HDB) in 2007 for redevelopment, his financial support of Victim 1 and her children decreased and eventually ceased. After the re-possession of his coffee shop, the accused took on the job of a cook in coffee shops but was not happy working for others. At the time of the offences, the accused was selling bird nest products that he obtained from Victim 1 on credit.

The Victims

3 **Victim 1** is [B], a 51 year old (DOB: [XXX]) female Indonesian Chinese, and who is resident in Singapore on the basis of possessing a long-term social visit pass. She had 2 previous marriages - the first to an Indonesian man who passed away and the second to a Singaporean, who also passed away in 2006. She has 2 children from her first marriage, a daughter aged 16 years and a son aged 14 years who is also the second victim (**Victim 2**) in this case. Both her children are studying in Singapore. The accused started an affair with Victim 1 after the death of her Singaporean husband with whom the accused was acquainted. To support herself and her children, Victim 1 had engaged in the sale of birds nest products that she obtained on credit from an Indonesian supplier.

4 **Victim 2** is [C], 14 years old at the time of the offence. He is the son of Victim 1 and a student of [XXX] Secondary School.

5 At the material time, both the victims were residing in a 3-room flat at [XXX], Singapore, which the accused had rented for them. The accused also paid the rental for the flat during the initial months of the year long tenancy.

Background to the relationship between Victim 1 and the accused

6 After Victim 1's first husband had passed away in Indonesia in 2005, she married a Singaporean and moved to reside in Singapore. Subsequently, her Singaporean husband also passed away. The accused, who was acquainted with Victim 1's second (Singaporean) husband, had known Victim 1 through him. After Victim 1's second husband passed away, the accused developed an intimate relationship with her. He also provided for Victim 1's children by giving them pocket money and paying some of their school expenses. Victim 1 was aware at that time that the accused was married and had a family of his own. In their discussions over their relationship, the accused promised to marry Victim 1 after divorcing his wife.

7 In November 2007, the accused rented the flat at [xxx] for the victim and her two children. The accused co-habited in the said flat with Victim 1 on certain days each week and also kept some of his clothing there. At the time of the offences the accused was also helping Victim 1 in her bird nest sales business. He took stocks of bird nest products from Victim 1 on credit and sold it to his friends and acquaintances. However, he failed to repay Victim 1 for some of the bird nest that he took.

8 About 3 months before the offences, the relationship between the accused and Victim 1

[started] to turn sour over the financial matters as well as over their personal relationship. The accused had stopped giving money to Victim 1 and her children and also failed to pay the monthly rental of the flat that they were staying in. Victim 1 also felt that the accused was undependable and not genuine with his promise to divorce his wife and marry her.

Events relating to the commission of the offences

9 Matters between Victim 1 and the accused came to a head on 6 November 2008 when the accused gave Victim 1 insufficient money to pay her supplier for the bird nest that she had obtained and part of which had been taken and sold by the accused. Victim 1 demanded that the accused give her more money but he told her that he would be able to give her more money only on the next day. On 7 November 2008, Victim 1 tried to contact the accused several times but he did not respond initially. When she eventually contacted the accused, she asked him to come to her flat. Victim 1 had the intention of ending their relationship.

10 When the accused arrived at the flat after about 12.30 pm, he and Victim 1 proceeded to the kitchen to talk. During the discussions, disputes relating to both financial matters and personal issues arose between them. Victim 1 told the accused that she wanted to end her relationship with him. She also told the accused repeatedly to take his belongings from the flat and leave. They also quarrelled over the proceeds of sale of a condominium flat in Batam to which the accused had contributed earlier in their relationship. The flat had been subsequently sold by Victim 1 at a loss. Their verbal quarrel agitated the accused and he tried to strangle Victim 1 with both his hands. However, Victim 2 who was then at home and playing on the computer in his room, heard his mother's choking cries for help and he came out of his room. Upon seeing the accused strangling Victim 1, Victim 2 pulled the accused away from Victim 1. Victim 1 then walked to the gate of the flat and shouted at the accused to leave the flat. In frustration, she also threw the padlock to the grill gate onto a cabinet near to where the accused was standing and the padlock fell to the floor. Although the padlock did not hit the accused, this action of Victim 1 further infuriated the accused who then went to the kitchen cabinet, took a chopper and went towards Victim 1 with the chopper raised. Terrified by the accused's actions, Victim 1 ran out of the flat towards the staircase and lift landing. The accused chased her out of the house and almost immediately caught up with Victim 1 along the common corridor, just outside the flat.

11 Victim 1 cowered against the corridor in a semi-squatting position with her back against the parapet wall of the common corridor. The accused then held her by her hair and used the chopper to hack at her head. Instinctively, Victim 1 used her hands to cover her head defensively. Blows with the chopper hit Victim 1 on her right hand as well as her head and she started bleeding from her injuries. Victim 2, who had run after them, saw the accused attacking his mother with the chopper. He saw Victim 1's hands going limp and she was unable to protect herself from the attack. At the same time Victim 2 pleaded with the accused not to hurt his mother. However, the accused ignored him and continued his vicious assault on Victim 1. Out of desperation, Victim 2 tried to protect his mother by raising his hands to stop the accused. The accused however did not stop chopping away. Victim 2 saw his left forearm and wrist injured by the chopper and his arm felt numb and weak. It also started to bleed profusely.

12 The accused then threw down the chopper along the corridor and according to Victim 2, in a swift action, the accused lifted Victim 1 by her upper thighs and threw her over the parapet by flipping her down the block from 3rd storey common corridor. Victim 1 recalled

trying to grab onto the railing of the parapet as she was falling, but was unable to do so and fell to the ground floor. She landed on her heels and collapsed to the floor. In his statement to the police, the accused admitted that he had chopped at Victim 1's head a few times.

13 Victim 2 then sought help from neighbours to call for the Police before running down to attend to his mother (the Police Radio Division records show that a total of seven "999" calls were received between 1.44 pm and 1.48 pm relating to this case). Along the way, and realising that the accused had gone back into the flat, Victim 2 picked up the chopper that had been thrown by the accused and brought it along with him, to prevent the accused from using it against his mother and him again. He saw that the Victim 1 was lying less than a meter away from the parapet. Police investigations and the blood stain on the wall of the parapet facing the open car park also suggested that Victim 1 was thrown down from the parapet as opposed to her jumping off the parapet.

14 In the meantime, the accused returned back to the flat to pack up his belongings. He also took Victim 1's hand phone that she had left in the flat and then left the scene and went into hiding from the Police. Despite the fact that the accused was contacted by the police on his hand phone to surrender immediately, he only surrendered to the police on 10 November 2008. Investigations revealed that while on the run, the accused contacted a friend, one Mr. Kulip Singh, a retired police officer and a former police prosecutor in the Subordinate Courts, and sought his assistance in getting legal representation and surrendering to the police.

15 On 10 November 2008, at about 11.25 a.m., Mr Kulip Singh arranged the surrender of the accused at the Capitol Building. When the police arrived, he was in the company of Mr Kulip Singh and his present counsel. He was placed under arrest and brought back to Ang Mo Kio Police station.

Medical Reports of the Victims

16 Both the victims were warded and treated at Tan Tock Seng Hospital for their injuries.

Victim 1

17 Victim 1 was attended to in the Emergency Department for her head laceration and [was] referred to be examined and treated by Dr Gamaliel Tan Yu Heng, the orthopaedic surgeon. Dr Gamaliel Tan raised 2 medical reports dated 3 December 2008 and 6 March 2009 on Victim 1. They show that Victim 1 sustained the following injuries resulting from the assault by the accused:

- a) Burst fractures of L1, L3 and L4 spinal vertebrae with cauda compression;
- b) Laceration over her right hand about 8cm extending from midshaft of her metacarpal to the 2nd web space with cut extensor tendon to middle finger and fractures of her 3rd metacarpal and middle finger proximal phalanx; and
- c) Commuted left calcaneal fracture.

18 Victim 1 underwent an emergency spinal surgery on the same day. The spinal fractures were reduced and instrumented from T11 to S1. Her right hand injuries were addressed in

the same operation with repair to the extensor tendon and fixation of the hand fractures. The calcaneal (heel) fracture was operated upon on 14 November 2008 when the swelling had decreased. Victim 1 was discharged from hospital on 25 November 2008 with follow up by the orthopaedic clinic to assess fracture healing. At present she is still undergoing physiotherapy and rehabilitation.

19 In his further report dated 6 March 2009, Dr Gamaliel Tan Yu Heng further opined that the fractures sustained by Victim 1 are severe and will leave her with permanent deficits. He further commented that whilst it is unlikely that Victim 1 would have died from her bone injuries, it was fortunate that Victim 1 did not have any internal organ damage or internal bleeding.

Victim 2

20 Victim 2 was examined and treated by Dr Bernard Lee Chee Siang, whose medical reports dated 14 December 2008 and 10 February 2009. The first report states that Victim 2 sustained two lacerations consistent with defensive injuries over the left distal forearm:

- a. 1 cm laceration over the dorsoradial aspect of the distal forearm, deep into muscles; and
- b. 4 cm laceration at the level of the wrist, extending cleanly all the way into the wrist joint which was totally exposed. The extensor tendons at the same level as the wrist laceration were cut. Victim 2 was unable to extend his fingers and was weak with wrist extension. He was scheduled for surgery to repair the cut structures.

21 Dr Bernard Lee Chee Siang opined that the wrist laceration and cut tendon injuries suffered by Victim 2 are consistent with the alleged mechanism of injury that is that of a slash wound with a sharp object. He further commented considerable force would have been employed as the laceration penetrated cleanly all the way into the joint through all the superficial structures.

[22] Dr Bernard Lee Chee Siang further opined that Victim 2 may have residual weakness and stiffness of his wrist and fingers following this injury. Victim 2 was discharged from hospital on 22 November 2008 and was given medical leave given medical leave [sic] from 7 November 2008 to 6 December 2008 (ie. a period of 30 days during which he was unable to follow his ordinary pursuits). He is still undergoing therapy.

Victim 2's Psychiatric report

[23] Victim 2 [was] also referred to Child Guidance Clinic on 11 February 2009. Dr Cai Yi Ming, Senior Consultant Psychiatrist of Child Guidance Clinic attended to him and thereafter prepared and submitted a psychiatrist report dated 12 February 2009. Dr Cai Yi Ming opined that there was no evidence of any mental disorder from Victim 2, and that Victim 2 was able to give an account of himself as well as the incident relating to the alleged offence. Following the incident, Victim 2 was traumatised and had trouble sleeping for about 1 – 2 weeks.

The accused's Psychiatric Report

[24] The accused was examined by Dr Thong Jiunn Yew, Associate Consultant of Institute

of Mental Health, whose psychiatrist report on the accused dated 26 December 2008.

[25] Dr Thong Jiunn Yew stated that at the time of the offences the accused suffered from a major depressive disorder (DSM IV-TR 296.3) as characterized by a 3 month history of depressed mood, diminished interest in appetite, insomnia and suicidal thoughts. Although the accused was not of unsound mind at the time of the alleged offence and was fit to plead, Dr Thong Jiunn Yew is of the opinion that the accused's depressed state, accumulated stress over the months and subsequent alleged provocation by Victim 1 had contributed to the alleged act.

Conclusion

[26] Based on the facts set out above, the accused has committed an offence of attempted culpable homicide with hurt caused to Victim 1, punishable under section 308 of the Penal Code, Chapter 224 and an offence of Voluntarily Causing Grievous Hurt by a dangerous weapon to Victim 2 punishable under section 326 of the Penal Code, Chapter 224. He is charged accordingly.

[emphasis in original]

3 After I convicted him of the two charges, his counsel submitted the following written plea in mitigation:

1. Our client has pleaded guilty to two charges; one punishable under Section 308 of the Penal Code and the other under Section 326 of the Code. We would humbly urge Your Honour to consider the following facts in mitigation.

Background

2. Our client is 53 years old. He has 2 children; the elder one is studying in Singapore and the younger son is currently doing his National Service. His wife is not working and is looking after the home and the children.

3. Our client was running a coffeeshop and selling seafood there until the HDB repossessed the unit as part of their upgrading programme in October 2007. After that he tried to find a job to earn a living but the income was very meagre and he found it hard to make ends meet especially as previously he had been doing quite well when he was doing his own business in the coffeeshop.

4. He first came to know the lady in question sometime in 2006. At that time she was married. Her husband passed away in 2006 and in that same year, she and our client began a relationship. He assumed the role of a financial support and provided for her and her 2 children.

5. At this time his business was doing well and he was not only giving her monthly expenses but also bought a flat for her in Indonesia. He spent about S\$23,000 for the flat. As far as he knew, this flat was subsequently rented out and the lady kept the moneys received as rental.

6. In addition, he also paid for the tuition fees for her two children for an English course and also their telephone bills.

7. He had also signed a bond with the Singapore Immigration for her children. This was in 2006 and 2007.

8. Subsequently, the lady had to move out of her flat in Toa Payoh and our client rented a flat for her at Ang Mo Kio (where the incident occurred) and paid for the rental and utility bills.

9. However, when he lost his coffeeshop and had to take a job, he found it extremely difficult to be able to maintain the life style he had created for her and that is when the problems started to surface.

10. When he was unable to maintain her as he had before, she grew cold towards him and wanted him out of her life.

11. It was during this period that the accused became very depressed as a result of the treatment he was receiving at her hands. According to Dr Thong Jiunn Yew of the IMH, at the time of the incident, he was suffering from a major depressive disorder. According to the doctor, this together with other factors contributed to the impulsive act.

12. Dr Tommy Tan (a psychiatrist in private practice) too is of the opinion that he was suffering from major depressive disorder.

Facts

13. On the day in question, the lady had told our client to come to the [XXX] flat, if he was a man.

14. He had taken some bird nest products to assist her in selling them. However, he had handed these products to various people to sell them and had not received payment yet. She demanded that he repay her immediately.

15. The day before he had actually borrowed money from an illegal moneylender and handed her \$2,000/-. However, she demanded full payment immediately and told him to come to the flat and settle the difference if he was a man.

16. When he got there, there was a terrible row between them and she asked him to get out of the flat. At this point, he felt belittled and stupid and could not understand how she could just throw him out of her life and the flat he had rented for her. He felt very angry and lost control of himself very probably because he was also suffering from a major depressive disorder.

17. He cannot understand or explain why he reacted in the way that he did as he is not an aggressive person.

18. He had never wanted to injure the boy and was hitting out at her when the boy intervened and was cut.

Mitigation

19. In mitigation, we would humbly urge Your Honour to take into account the fact that this was not a planned or premeditated attack. It was, as Dr Tiong opined, an impulsive act

and occurred at the spur of the moment because of the quarrel between the two and the fact that she asked him to get out of the house.

20. Secondly, although he did not surrender himself immediately, he did so as soon as he was advised to do so. During the time before he was arrested, he also did not do anything to dispose of any evidence and when he was arrested, he still had the clothes he had worn on that day which assisted the police during investigations. He did not try to dispose or wash away the blood stains on the clothes he had worn that day.

21. Your Honour, he has absolutely no previous convictions or antecedents of any nature whatsoever and this is his first brush with the law in every sense of the word.

22. He is already Your Honour, 53 years old. He realises that he faces a period of time in prison but besieges [*sic*] Your Honour to allow him to be reunited with his family as soon as possible. His wife and children have stood by him in this trying time and this has taught him an important lesson about who really is interested and concerned about his welfare. It has been an expensive lesson but one that he has learnt well from.

23. From his clean part and the fact that this was really a one-off impulsive incident, he is not likely to re-offend.

24. Finally Your Honour, both the offences were committed at almost the same time.

25. In respect of the second offence, the boy had been injured in the midst when the accused had hit the lady. It had occurred at almost the same time and we would humbly urge Your Honour to order the two term[s] of imprisonment [to] run concurrently from the date of his remand. He was first charged on 12 November 2008.

26. In the circumstances, Your Honour, we urge you to temper justice with mercy.

4 The deputy public prosecutor, Mr Amarjit Singh ("Mr Singh"), tendered a written submission on sentence. The first point was that the charge against the accused had been reduced from attempted murder under s 307 Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") to one of attempted culpable homicide under s 308 on account of the accused suffering from a major depressive disorder at the time of the offence. Therefore the fact of the mental illness of the accused should not be relevant in the consideration of the appropriate sentence for the offence under s 308. With respect, I do not agree with this submission. The court must take into consideration all factors relevant to the case and the fact of the mental illness of the accused at the time he committed the offence must be a relevant one. The charge against the accused may have been reduced by the prosecution from attempted murder, but that is a decision of the prosecution which may be made for a variety of reasons, including the availability or otherwise of evidence to prove the charge. The court does not consider how the Public Prosecutor has exercised his discretion on the charge. In a trial, the court may only look at the evidence before it in relation to the charge to see if the offence is made out. In considering the sentence the court looks at the facts proved or agreed in the statement of facts, and imposes a sentence that is most appropriate on a consideration of all relevant factors in the case.

5 Mr Singh's next submission is that the punishment for s 308 Penal Code had, from 1 February 2008, been increased (where hurt is caused) from a maximum of seven years' imprisonment, with or without fine, to a maximum of 15 years, or fine, or caning, or any combination thereof. He pointed out that the reason provided in Parliament by the minister at the second reading of the amendment bill was that a maximum of seven years' imprisonment was "grossly inadequate".

Mr Singh submitted that this meant that Parliament had intended that the sentences for such cases should be increased accordingly. If I accept this submission, it would mean that if a person who had committed an offence under s 308 before 1 February 2008 was sentenced to three years' imprisonment out of a maximum of seven years, the same person, had that offence been committed after 1 February 2008, would be sentenced to a higher term of imprisonment on account of Parliament increasing the maximum to 15 years. With respect, I cannot see the logic in this submission and disagree that such was what Parliament had intended. This is not a regulatory offence in which the maximum sentence provides guidance as to its severity. It pertains to an offence under Chapter XVI of the Penal Code dealing with offences affecting the human body. In my view, Parliament had intended to provide for a higher maximum imprisonment term in recognition of the fact that a maximum of seven years is inadequate in the most egregious cases, where the court would be constrained to impose the maximum seven years. That the maximum of seven years is somewhat inadequate is obvious when this is contrasted to the maximum of ten years or life imprisonment provided in s 326 (before 1 February 2008) where an intention to kill is not a required element of the offence.

6 In determining the appropriate sentence, I have to bear in mind the fact that the punishment for an offence under s 308 Penal Code is imprisonment up to 15 years, or fine, or caning, or any combination thereof. The salient facts are as follows. The accused had engaged in a quarrel with Victim 1 over money as well as over their sexual relationship, a volatile combination. Victim 1 threw a padlock at the accused and although this missed him, it infuriated him to the extent that he lost control of himself. The accused went to the kitchen, took a chopper and approached Victim 1. She ran out of the flat and the accused chased her, chopper in hand. He caught up with her and as she cowered against the parapet wall of the corridor, the accused held her by the hair and hacked her on the head with the chopper. Victim 1 raised her hand defensively. She suffered deep cuts in her right hand as well as her scalp as a result. Her son, Victim 2, pleaded with the accused not to hurt Victim 1 but was ignored. Out of desperation, Victim 2 used his hand to stop the accused from hacking Victim 1. But the accused was so intent on attacking Victim 1 that he carried on hacking, as a result of which Victim 2 suffered two deep cuts on the forearm and wrist. Considerable force had been used to inflict these injuries. The accused then threw down the chopper and lifted Victim 1 by her upper thighs and flipped her over the parapet, from where she fell two levels to the ground below. Fortuitously Victim 1 managed to land on her feet, otherwise she could have died from the fall. Nevertheless, the injury was severe because she had fractures in three spinal vertebrae. She had to undergo emergency spinal surgery. After tossing Victim 1 over the parapet, the accused returned to the flat, packed his belongings, took Victim 1's mobile phone and left the scene. He surrendered to the police three days later.

7 The first point to be noted is that Victim 1 could easily have died from the fall. The degree of violence in this case is high: first the accused hacked away at Victim 1 with a chopper inflicting deep cut wounds on her head and wrist, ignoring Victim 2's pleas to stop. He went about this with such single-minded intensity that he did not stop hacking even when Victim 2's hands got in the way, as a result of which Victim 2 suffered two deep cuts. He then threw down the chopper and lifted Victim 1 over the parapet to toss her off the third storey. This would have required considerable effort as the accused is not of large build, and Victim 1 is not of small build.

8 The next point to be noted is the severity of the injuries. The cuts caused by the chopper were deep, and had he continued to hack away, Victim 1 could have died from bleeding. For some reason he stopped hacking at her, perhaps due to Victim 2's intervention, but decided to finish the task by tossing her off the balcony. It is such an extreme act that the only inference in the circumstances is that it was done with the intention to cause death.

9 A further factor is that after the accused threw Victim 1 off the balcony, he was not overcome

with remorse by the realisation of what he had done. Instead he returned to the flat to pack his belongings, and even had the presence of mind to take Victim 1's mobile phone as he left. It took him three days to surrender.

10 The main factor in the accused's favour is the fact that he was suffering from a major depressive disorder at the time. This had started some three months before the incident, due to the pressures of the situation he landed himself in – he had acquired a mistress whom he had to support along with her children, he had to keep this affair a secret from his wife, his business had turned bad and Victim 1 started pressuring him not only for money but also to marry her. As a result, he became depressed, socially withdrawn, suffered loss of appetite and entertained thoughts of suicide. He turned to alcohol to drown his sorrows.

11 Mr Singh cited the following precedents for the offence under s 308 Penal Code:

(a) *Public Prosecutor v Chot Saik Kam* ("Chot Saik Kam") [1990] SLR 756, in which the accused pleaded guilty to one count of culpable homicide not amounting to murder under s 304(a) Penal Code and one count of attempted culpable homicide not amounting to murder under s 308. He was sentenced to ten years' imprisonment in respect of the charge under s 304(a) and three years' imprisonment for the s 308 charge. Both sentences were ordered to run consecutively. The accused there, who had been diagnosed with depression not amounting to unsoundness of mind, stabbed his two female flatmates after a quarrel with one of them. After the initial quarrel with one of the victims, the accused took a knife from the kitchen and approached the room where the two victims were watching a video. When they opened the door for him, the accused attacked the victims with the knife, one after the other. The surviving victim managed to lock herself in the room when the accused turned his attention to the deceased who was trying to escape.

(b) *Public Prosecutor v Low Ah Fatt* ("Low Ah Fatt") (CC 36 of 1992, unreported), in which the accused was sentenced to 42 months' imprisonment on a charge under s 308 Penal Code. The accused was infuriated when he was handed an eviction letter by the one of the two victims. He tried to attack both victims with a knife but they managed to lock themselves in the bedroom. He then poured flammable liquid through the bedroom door and lit it. One of the victims sustained 13% burns on his body. The prosecution proceeded against the accused on only one charge with the other charge taken into consideration for sentencing.

(c) *Public Prosecutor v A Aziz Bin A Wahid* ("A Aziz Bin A Wahid") (CC 37 of 2001, unreported), where the accused was charged under s 308 Penal Code for stabbing his wife. The accused and his wife had been having matrimonial problems and on the day of the offence, the Syariah Court informed the accused that his wife would not be returning to him. The accused took a knife from his home and went to the place of work of his wife. There he stabbed her three times, inflicting severe stab wounds. He was sentenced to three years' imprisonment.

(d) *Public Prosecutor v Ong Kim Geok* ("Ong Kim Geok") (CC 16 of 2002, unreported), in which the accused was charged under s 308 Penal Code for throwing her 8-year-old daughter down the rubbish chute from her fifth floor residence. The accused became annoyed when she saw the victim consuming cold leftover food. The accused slapped the victim, caned her and pinched her thigh and directed her to go back to sleep. However, the victim was unable to fall asleep as she was hungry. At about 5am, when the accused saw the victim awake, she dragged her to the kitchen and threw her down the rubbish chute. The victim was only rescued from the base of the rubbish chute at 8.00am by a cleaner clearing the rubbish chute. In sentencing the accused to two years and six months' imprisonment, the court took into account the fact that the accused

had been suffering from hypothyroidism, a condition characterised by markedly agitated and aggressive behaviour. In this case too, the prosecution had proceeded against the accused on only one charge. A second charge under s 4(6) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) was taken into consideration for the purposes of sentencing.

(e) *Public Prosecutor v Kwong Kok Hing* ("Kwong Kok Hing") [2008] 2 SLR 684, in which the accused was charged under s 308 Penal Code for pushing the victim, his ex-girlfriend, into the path of an oncoming train at a mass rapid transit ("MRT") station. Fortunately, the victim landed on the tracks in a crouching position and managed to dash to safety on the other side of the track with less than a second to spare before the train would have hit her. The accused, who was suffering from depression at the time of the offence, pleaded guilty and was initially sentenced to one year's imprisonment in the High Court. On the public prosecutor's appeal, the Court of Appeal enhanced the sentence of imprisonment to three years.

12 In *Chot Saik Kam*, in which the accused was sentenced to three years' imprisonment on the s 308 charge, the court had considered that he did not have the intention to cause death or such bodily injury as is likely to cause death – which is, in effect, limb (b) of s 304 Penal Code. At [28] of his judgment, Punch Coomaraswamy J said:

Section 308 of the Penal Code creates an offence which, where the victim had died, the offence would have been one under s 304. Each of paras (a) and (b) of s 304, refers to different and distinct states of an accused's mind. Notwithstanding the nature of the injuries, I gave the accused the benefit of treating him as having no intention to cause death or to cause such bodily injury as is likely to cause death as in para (a) [sic] of s 304. This is what led me to sentence him to three years' imprisonment on the amended second charge although the maximum provided under s 308 is seven years or a fine or with both.

There appears to be an error in the report as the limb in s 304 that pertains to a lack of intention to cause death is limb (b). In the present case I had considered at [\[8\]](#) that the accused had intended to cause the death of Victim 1.

13 In *Low Ah Fatt*, one victim did not suffer any physical injury while the injury of the second, who had 13% burns on his body, was not caused by a direct attack by the accused but by his reckless act of setting fire to the bedroom. The fire itself did not appear to be a large one as it took quite a while for them to be rescued. It would appear that the sentence was based on limb (b) of s 304 Penal Code, as in *Chot Saik Kim*. In the present case, severe injuries were inflicted directly by the accused on Victim 1 with a chopper before he threw her off the balcony.

14 In *A Aziz Bin A Wahid*, the accused inflicted three stab wounds on the victim, who was his wife and with whom he was undergoing a divorce. The stab wounds were serious and it was fortuitous that the incident took place at a hospital and immediate treatment was available. The main differences between this and the present case are that (a) the accused did not go further and throw the victim off a height, and (b) he did not injure any other person in the course of committing the crime.

15 *Ong Kim Geok* involved a mother who threw her 8-year daughter down a rubbish chute. On any analysis, this tragic case is special on its facts.

16 In *Kwong Kok Hing*, the trial judge had taken into consideration the fact that the victim's physical injuries were minor and, taking into account the other factors in the case, sentenced the accused to one year's imprisonment. On appeal the Court of Appeal held that the word "hurt" in s 308

Penal Code included emotional trauma, which the victim had suffered greatly. The Court of Appeal also considered that it was necessary to impose a deterrent sentence as the incident took place in an MRT station. In enhancing the sentence to three years' imprisonment, the court said at [46]:

Ultimately, however, we decided on a sentence of three years' imprisonment because of two persuasive mitigating factors. First, we took into consideration the psychiatric condition of the respondent. We accepted the expert evidence that suggested the respondent was suffering from depression, and would have qualified for the defence of diminished responsibility if the victim had died and he had then been charged with murder. This to some extent reduces his level of culpability though it must be pointed out that he was aware of, and remained responsible for, the consequences of his actions. We were persuaded that with the right treatment and care, the respondent could be rehabilitated and become once again a useful member of society. The issue of incapacitation does not arise. In addition, we made an allowance for the fact that the respondent had been released from prison custody before the sentence was enhanced. He has to now undergo a further prison sentence all over again for the same offence. In our opinion, such a situation justifies some discount to the final sentencing equation: see *Fernando Payagala*. This sentence of three years' imprisonment would, in our view, give effect to the relevant sentencing considerations of deterrence, retribution and rehabilitation, and, at the same time, encapsulate society's condemnation of the respondent's conduct.

17 Hence it was based on two mitigating factors: (a) the potential for rehabilitation; and (b) the fact that the accused had already served the one-year imprisonment imposed by the trial judge, had been released for more than six months and would have to undergo the trauma of returning to prison, that the court imposed a sentence of three years. In the present case, although tossing a person off the third storey is as bad as pushing someone into the path of an incoming train, there are two aggravating factors: (a) the accused had caused severe injuries with a chopper on Victim 1 as well as Victim 2 who tried to stop him; and (b) the accused had tossed Victim 1 off the balcony, using great force to lift her off the ground in order to get her over the parapet.

18 It is appropriate at this point to address Mr Singh's submission that, following the decision in *Kwong Kok Hing*, I should also impose a deterrent sentence. In determining the appropriate sentence, the court bears in mind the principles of sentencing, which are generally considered to be retribution, deterrence, prevention and rehabilitation (see *Kwong Kok Hing* at [17]). The degree to which each of these principles affects the sentence depends on the nature of the offence and the particular facts of the case. In asking for a deterrent sentence, I took it to mean that I should give more weight to the deterrence factor in deciding on the appropriate sentence, or that a sentence that is based mainly on the other factors, namely retribution, prevention and rehabilitation, would not result in a punishment that would deter like-minded persons from committing similar offence. With respect, I cannot see the logic of this submission for the present case. This is a crime of passion, committed without premeditation in the heat of a sudden quarrel. The accused had caused grievous injury to Victim 1 in the course of attempting to kill her. He must be punished appropriately for the gravity of his crime and the degree of harm he had inflicted on the victims. I cannot see how, by imposing a sentence harsher than what retributive principles would call for, this could deter similar crimes of passion. Such crimes, by their very nature, do not involve calm deliberation on the part of the perpetrators. General deterrence works well for offences where there is some degree of premeditation so that the threat of severe punishment could dissuade potential offenders from committing them. Or it may be justified where detection is difficult or there is a prevalence of such offences and there is a need to stamp it out. In these instances there is a greater public good achieved in making an offender undergo a more severe punishment than what the gravity of the crime would otherwise require. The point is that there must be a good basis for the court to pronounce a harsher sentence than what it

would otherwise impose if the deterrence were not an important factor. To do so simply because the offence is grave is not a good basis because it does not address the need for the additional punishment.

19 In *Kwong Kok Hing*, the Court of Appeal considered that a deterrent sentence was called for not because of the nature of the offence but because it was located in an MRT station which requires special consideration. The court said at [39]–[41]:

39 In this case, there is plainly a need to send out a clear message to the public that it is wholly unacceptable to commit similar violent and dangerous acts, regardless of whether they are premeditated, rash or impulsive. The MRT plays a major role in the lives of many Singapore commuters. According to the Land Transport Authority's figures, the MRT had an average daily ridership of 1.435 million last year. Of the over 60 train stations currently in operation, over half – 35 – are above ground. Clementi station is one of them, and, extraordinarily, it has seen more than its fair share of incidents. On 30 October 2006, just over a month after the respondent's offence, a man was hit and killed by a train at Clementi, resulting in a delay that affected 11,700 commuters. Two months later, at the same station, a woman got her leg stuck in the gap between the train and the platform, fracturing her leg in the process. On 20 July 2007, another person was killed by an incoming west-bound train at Clementi. Similar incidents have recently taken place at other MRT stations. It should be pointed out, however, that a number of these incidents were suicides or accidents.

40 The spate of serious and fatal incidents in recent times has undoubtedly left its mark on the train commuter's psyche, leading to widespread calls from the public for platform screen doors to be installed at above-ground stations. On 25 January 2008, Mr Raymond Lim, Minister for Transport, announced plans to install such doors ... This squarely addresses the growing concern about safety at above-ground MRT stations. Nevertheless, it bears mention that installation of these doors at all stations will only be completed by 2012; in the meantime, there is a perception among some that danger continues to lurk on every exposed train platform.

41 Potential offenders must be firmly discouraged from committing offences in the vicinity of MRT trains or stations. Whether a person intends to kill or not, the act of pushing a helpless person off a train platform and onto the tracks is an act so despicable and inherently dangerous that it must be unequivocally censured by the courts so as to deter others from even contemplating carrying out similar acts, let alone actually committing them. MRT trains are a convenient and affordable form of public transport for a large segment of the population. An unambiguous and robust message must be sent out that dangerous conduct similar to the respondent's will not be condoned, and if it does occur, the public must be reassured that the perpetrator will be treated both firmly and promptly.

20 I return to my consideration of the precedents. The three years' imprisonment imposed in *Kwong Kok Hing* was due to the special circumstances there, in the absence of which a higher sentence would be called for. The sentences in *Low Ah Fatt* and *A Aziz Bin A Wahid* ranged from three to three and a half years, but the facts there were less aggravating than the present case. The accused here had launched a vicious attack with a chopper on Victim 1, injured Victim 2 in the process, before throwing Victim 1 off the balcony. Victim 1 had mercifully survived the fall but had sustained severe injuries. Taking into consideration the factors raised in the mitigation plea, I was of the view that the appropriate sentence would be a term of imprisonment of five years.

21 In relation to the second charge under s 326 of the Penal Code, as I have pointed out in [\[5\]](#) above, it is curious that it provides a maximum of life imprisonment or for a term up to 15 years, which is much more than that for s 308 even though an intention to cause death is not an element of the charge. In view of the fact that the accused's acts were directed at Victim 1 and that he had only injured Victim 2 when the latter tried to protect her, I was of the view that a sentence of one year's imprisonment would be appropriate.

22 Mr Singh asked that the sentences be ordered to run consecutively. However both offences were committed in the same transaction. Indeed the second offence under s 326 Penal Code was committed incidentally to the first. Furthermore, I had considered the fact that the accused had single-mindedly gone about hacking Victim 1, in the course of which he injured Victim 2, as an aggravating factor in the first offence. Finally, the principle of totality of sentence must be borne in mind and I was of the view that the appropriate punishment for the accused for both offences would be five years. I therefore ordered the sentences to run concurrently.

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