Soh Meiyun *v* Public Prosecutor
[2014] SGHC 90

Case Number : Magistrate's Appeal No 304 of 2012 and Criminal Motion No 42 of 2013

Decision Date : 29 April 2014

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Quek Mong Hua and Nicholas Poa (Lee & Lee) for the appellant; Kumaresan Gohulabalan (Attorney-General's Chambers) for the respondent.

Parties : Soh Meiyun — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Causing hurt to a domestic maid

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Evidence of psychiatric condition of appellant offender

Criminal Procedure and Sentencing – Compensation and costs – Compensation orders

29 April 2014 Judgment reserved.

Chao Hick Tin JA:

1 This is an appeal against sentence in a case of maid abuse. The appellant, a 34-year-old female Singaporean who was 29 years old at the time she committed the offences, claimed trial in the court below to two charges of voluntarily causing hurt *simpliciter* and one charge of voluntarily causing hurt by dangerous weapons or means punishable under ss 323 and 324 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") respectively. The trial judge ("the District Judge") convicted her on all three charges and imposed on her a total sentence of 16 months' imprisonment.

2 In support of her appeal the appellant sought, by way of Criminal Motion No 42 of 2013, to admit fresh evidence on appeal pursuant to s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012"). This evidence consisted of a medical report dated 10 June 2013 prepared by a psychiatrist from the Institute of Mental Health, where he expressed the opinion that the appellant was suffering from "major depressive disorder" and "obsessive compulsive disorder" at the time she committed the offences against her domestic maid.

Facts as found by the District Judge

3 The facts of the case may be gleaned from the District Judge's written grounds of decision ("GD") dated 7 January 2013 (see *Public Prosecutor v Soh Meiyun* [2013] SGDC 12) as well as his oral judgments delivered earlier on 16 November 2012 and 7 December 2012 respectively. In the first oral judgment he explained his decision as to the appellant's guilt on the charges, while in the second oral judgment and the GD he explained his decision on the sentence he imposed on her.

4 The victim entered the appellant's employ as a domestic maid on either 19 or 21 March 2009. She was then 26 years old. For the first two weeks of her employment she was not abused. But thereafter, the District Judge found that "incidents of assault and abuse" occurred "almost every day" until 28 May 2009, the day on which the victim escaped from the appellant's home: at [39] of the GD.

5 Although the District Judge found that the victim was assaulted almost every day, the fact is that the prosecution preferred only three charges against the appellant. Each charge related to a separate incident of abuse against the victim. Dealing with the incidents in chronological order, the incident involving the second charge, which was one of the two charges of voluntarily causing hurt *simpliciter* (the other being the third charge), took place sometime in April 2009. The appellant used a bamboo pole to hit the victim on her head, back, and thighs; it is not clear whether all this took place at a single incident or at different times, but that is not important. As a consequence of the beatings the victim sustained multiple bruises, including a particularly large bruise measuring 18 cm by 30 cm on her left thigh and two smaller bruises each measuring 5 cm by 2 cm on her right thigh, as well as two cephalohematoma on her head (*ie*, bleeding and subsequent bruising above the skull but beneath the skin of the head) measuring 3 cm and 5 cm, respectively.

6 The next incident occurred sometime in May 2009 and this formed the subject of the first charge, which was for voluntarily causing hurt with dangerous weapons or means. The appellant asked the victim if she wanted a heated spoon applied to her skin, to which she replied in the negative; but the appellant nevertheless proceeded to turn on the gas stove and heated a metal spoon over the fire before pressing the hot spoon against the victim's arm. After this was done the appellant asked the victim the same question, and upon receiving the same response, once again placed the heated spoon on the victim's skin.

7 The final incident, which formed the subject matter of the third charge, took place on 28 May 2009, the day on which the victim finally made her escape. The District Judge found that the appellant had forced the victim to strip naked and went on to use a sewing needle to inflict punctures and scratches on various parts of her body, including her neck, chest, and lower back.

Sentences imposed by the District Judge

8 Under s 323 of the Penal Code, the maximum punishment for an offence of voluntarily causing hurt *simpliciter* is two years' imprisonment and a fine of $5,000. Under s 324 of the Penal Code, the maximum term of imprisonment for an offence of voluntarily causing hurt with dangerous weapons or means is seven years; the offender is in addition liable to be fined or caned, but with no specification as to the maximum quantum of fine or number of strokes. However, the maximum punishments for these offences are enhanced when the victim is a domestic maid and the offender, the maid's employer or a member of the employer's household. This is provided for in s 73(1)(*a*) and s 73(2) of the Penal Code, which read as follows:

> **Enhanced penalties for offences against domestic maids**
>
> **73.**—(1) Subsection (2) shall apply where an employer of a domestic maid or a member of the employer's household is convicted of —
>
> (*a*) an offence of causing hurt or grievous hurt to any domestic maid employed by the employer punishable under section 323, 324 or 325;
>
> …
>
> (2) Where an employer of a domestic maid or a member of the employer's household is convicted of an offence described in subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*), the court may sentence the employer of the domestic maid or the member of his household, as the case may be, to one and a half times the amount of punishment to which he would otherwise have been liable for that offence.

…

This means that the maximum punishment that could have been imposed on the appellant was three years' imprisonment and a fine of $7,500 for voluntarily causing hurt *simpliciter*, and 10.5 years' imprisonment plus a fine with no limit as to amount for voluntarily causing hurt by dangerous weapons or means. There could be no caning as the appellant is a woman.

9 The District Judge imposed a sentence of nine months' imprisonment in respect of the first charge (which involved the heated spoon); seven months' imprisonment for the second charge (which involved the bamboo pole); and nine months' imprisonment for the third charge (which involved the sewing needle). He ordered the sentences for the second and third charges to run consecutively, and the sentence for the first charge to run concurrently with the other two sentences, making a total sentence of 16 months' imprisonment.

Fresh evidence sought to be admitted

10 Before I could consider the appeal against sentence I had to decide on the appellant's application to admit, at this stage, evidence on the appellant's psychiatric condition at the time of the offences. To recapitulate, this evidence consisted of a medical report dated 10 June 2013 put up by Dr Yao Fengyuan ("Dr Yao"), a psychiatrist with the Institute of Mental Health. This medical report ("the Medical Report") arose out of a request made on 24 April 2013 by the appellant's counsel at the trial below, Mr Roy Yeo ("Mr Yeo"), that a psychiatric examination be conducted on the appellant as to her mental state at the time the offences were committed. This request was made about five months after the appellant was convicted on 16 November 2012 and about four months after she was sentenced on 7 December 2012. In arriving at his diagnosis that the appellant was suffering from major depressive disorder and obsessive compulsive disorder at the time of the offences, Dr Yao conducted three interviews with her on 7, 16, and 21 May 2013 and likewise conducted three interviews with her husband on 7, 13, and 21 May 2013. Dr Yao also perused the District Judge's GD, the appellant's police statement dated 2 June 2009, and the medical report on the victim.

11 The Medical Report implied that the trigger event which brought about the appellant's major depressive disorder and obsessive compulsive disorder was the birth of her son on 6 April 2008, which was about a year before she committed the offences. After her son was born, she "faced significant stress" and "subsequently developed depressed mood". Her symptoms included "loss of interest, poor sleep, poor concentration and poor energy levels". Her husband said that she would "get frustrated very easily" and quarrel with him "almost every day". The Medical Report added that the appellant had "recurrent intrusive thoughts" that things would be dirty if not cleaned or handled in a certain way, and the way in which she coped with these thoughts was to "follow a ritualistic way of cleaning and packing things". Her husband said that she would "spend many hours just to wash milk bottles, wash the clothes and pack the dry clothes in the cupboard".

12 In response to the Medical Report, the prosecution wrote to Dr Yao by way of a letter dated 23 July 2013, setting out a list of questions meant to test the reliability of his diagnosis and his methodology. One of the prosecution's chief concerns was that in the appellant's interviews with Dr Yao, she appeared to have provided him with a description of her offences that differed significantly from the facts as found by the District Judge and that portrayed her in a markedly more positive light. She told Dr Yao that she pressed a heated spoon against the victim's skin but "lightly", and only once, and merely in order to educate the victim on the hazards of placing spoons inside pots while the pot was being heated over the stove; she told him that she did not use a bamboo pole to hit the victim, although she acknowledged using a hanger just once; and she told him that she did not use a sewing needle to scratch the victim, but instead inflicted scratches unintentionally when she

tried to grab onto the victim for support, having slipped on the wet living room floor.

13 Dr Yao answered the prosecution's list of questions by way of a letter dated 27 August 2013. As this is not a very lengthy document it is worth setting out in full the prosecution's questions, which are in italics, and Dr Yao's replies:

> *1. As the [appellant's accounts of the three offences are markedly different from the findings of fact made by the District Judge, which] are accepted as the truth in a court of law, is the diagnosis of Major Depressive Disorder and Obsessive Compulsive Disorder still accurate?*
>
> The diagnoses of Major Depressive Disorder and Obsessive Compulsive Disorder are still accurate. The diagnoses were made based on her symptoms prior to her offences.
>
> *2. Can you render an opinion on whether the symptoms for Major Depressive Disorder and Obsessive Compulsive Disorder can be feigned?*
>
> I run at least 2 clinics every week and I see patients with common psychiatric condition such as Major Depressive Disorder and Obsessive Compulsive Disorder every week. I believe her symptoms for Major Depressive Disorder and Obsessive Compulsive Disorder are very unlikely to be feigned. I say this because the history she gave me was consistent and typical of someone who had both conditions.
>
> *3. As stated in question 1 above, there are significant discrepancies between the findings of fact in the GD and the [appellant's] account to you. As the [appellant] appears to have been untruthful when narrating her history, what measures, if any, were taken during the diagnosis to identify malingering? Specifically, during diagnosis, were there safeguards in place to identify if symptoms for mental illness were feigned or exaggerated by the [appellant]?*
>
> I had examined the [appellant] on 3 separate occasions to check if her history was consistent. I tried to use open-ended questions (instead of leading close-ended questions) to gather history from the [appellant]. For her assessment, I had also interviewed her husband, and perused the Grounds of Decision, her police statement dated 2nd June 2009 and the medical report on the victim. I confirmed that her symptoms were typical of Major Depressive Disorder and Obsessive Compulsive Disorder. I also did an objective mental state examination (which does not rely on the subjective account of the [appellant]), which confirmed her objective mental state was consistent with her subjective symptoms.
>
> *4. Were any psychological/psychiatric tests conducted on the [appellant] as part of the diagnostic process? If so, what tests were performed? What were the results and what is the significance of those results?*
>
> No psychological/psychiatric tests were done. My examinations with the [appellant] involved taking a comprehensive psychiatric history (covering her background history, her past psychiatric history, her symptoms around the time of the offence and her account of her offences) and doing an objective mental state examination.
>
> *5. Page 5 of the [Medical Report] states that the [appellant's] mental illness 'was likely a contributory factor to her offence'. Kindly elaborate on how her mental illness contributed to the offences.*
>
> As mentioned on page 5 of my previous report, her condition of Major Depressive Disorder and

Obsessive Compulsive Disorder can cause her to have difficulty controlling her emotions and behaviour.

Principles governing the admission of fresh evidence in a criminal appeal

14 When fresh evidence is sought to be admitted in a criminal appeal, s 392(1) of the CPC 2012 provides that the appellate court may admit the evidence if it thinks the evidence is "necessary". Yong Pung How CJ in the High Court case of *Juma'at bin Samad v Public Prosecutor* [1993] 2 SLR(R) 327 ("*Juma'at*") held at [13] that whether fresh evidence is "necessary" is to be determined by applying the three conditions laid down by Denning LJ in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"). *Ladd v Marshall* was a civil case but Yong CJ seemed to take the view that the test there could be transplanted unmodified into criminal proceedings. The first condition of "non-availability" is satisfied if the evidence could not have been obtained with reasonable diligence for use at the trial. The second condition of "relevance" is satisfied if the evidence is such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive. The third condition of "reliability" is satisfied if the evidence is such as is presumably to be believed, *ie*, apparently credible, although it need not be incontrovertible. This wholesale importation of the *Ladd v Marshall* test into the criminal process led Yong CJ to opine that fresh evidence would be admitted on appeal only in "extremely limited" circumstances: *Juma'at* at [15]. This ruling in *Juma'at* received the endorsement of the Court of Appeal in *Van Damme Johannes v Public Prosecutor* [1993] 3 SLR(R) 694 at [5] and has been followed in many subsequent cases.

15 However, in the relatively recent decision of *Mohammad Zam bin Abdul Rashid v Public Prosecutor* [2007] 2 SLR(R) 410 ("*Mohammad Zam*"), the Court of Appeal appears to have favoured a less restrictive approach than that of Yong CJ in *Juma'at*. The Court of Appeal in *Mohammad Zam* took the view at [7] that while the *Ladd v Marshall* conditions were "valid and reasonable considerations" and thus furnished "useful points for consideration even in a criminal case", an appellate court exercising criminal jurisdiction nonetheless had to remain "mindful of the higher burden of proving guilt in a criminal case". The court also said at [6], albeit implicitly, that the first *Ladd v Marshall* condition of non-availability was less "paramount" than the other two conditions of relevance and reliability, or "materiality" and "credibility" respectively in the terminology employed by that court.

16 In my view, where the fresh evidence would go towards exonerating a convicted person or reducing his sentence, the spirit of greater willingness to admit such evidence on appeal as demonstrated by the Court of Appeal in *Mohammad Zam* is to be preferred. The *Ladd v Marshall* condition of non-availability is designed to prevent the waste of judicial resources that results from reopening cases which ought to have been disposed of the first time around, but there is the countervailing consideration that an erroneous criminal conviction or erroneously heavy punishment will have drastic ramifications for the convicted person. It could spell an unjustifiably lengthy period of incarceration and/or corporal punishment, or in the worst case, death. Even if none of these undeserved penalties ensues, since one of the functions of the criminal law is to label persons as deserving of society's condemnation by reason of their conduct, a conviction carries with it an indelible moral stigma that affects the person's life in many real ways. Hence, an appellate court exercising criminal jurisdiction should generally hold that additional evidence which is favourable to the accused person and which fulfils the *Ladd v Marshall* conditions of relevance and reliability is "necessary" and admit such evidence on appeal.

Whether the fresh evidence should be admitted in the present case

17 With reference to the first condition of non-availability enunciated in *Ladd v Marshall*, I doubt that it was fulfilled in the present case. Dr Yao's diagnosis was based on the appellant's and her

husband's accounts of what her mental state was at the time of her offences; this was not some new information discoverable only at a later stage, but was instead something that they knew all along, even prior to the trial below. Of course, it would be entirely understandable for the appellant herself not to have appreciated that her mental state could possibly qualify as a medically-recognised psychiatric condition. But she was represented by Mr Yeo at the trial below, and I think that if he had searched with reasonable diligence for mitigating circumstances he could raise in her favour, he would have obtained from her a comprehensive description of her thoughts and emotions at the time of the offences. Indeed, in mitigation by way of oral submissions before the District Judge, Mr Yeo alluded to the appellant's difficulties at the time when she committed the offences in coping with her son, who was then just a year old. Since it would seem that during the trial below the appellant was able to recollect her mental state at the time of her offences, it would be odd if her recollection did not extend to her psychiatric history from which Dr Yao was eventually able to make his diagnosis. Therefore I would have thought that a diagnosis of the appellant's psychiatric condition at the time of the commission of the offences was something that could, with reasonable diligence, have been obtained at the trial below, or at the very latest in the three weeks between her conviction and the District Judge's verdict as to sentence, during which period the appellant and Mr Yeo would have directed their minds entirely towards the question of mitigation.

18 As for the second *Ladd v Marshall* condition of relevance, it seems to me uncontroversial that the fresh evidence sought to be admitted fulfilled that condition. The prosecution did not challenge this. If the appellant was indeed labouring under certain psychiatric conditions at the time of the offences which diminished her ability to control her emotions and behaviour, her culpability for her actions would be reduced; this would warrant a less severe sentence on retributive principles. Moreover, her psychiatric problems would tend to call for a reduction in the duration of imprisonment, or even a non-custodial sentence altogether, on the basis that too prolonged a period of incarceration might have an adverse impact on her rehabilitation, since the harsh privations of prison do not provide the most conducive environment for dealing with mental health difficulties; indeed, the stress of being denied liberty might exacerbate her condition.

19 Finally, on the third *Ladd v Marshall* condition of reliability, while the Medical Report is vested with a degree of credence by the fact that it was presented by a psychiatrist at a State medical institution specialising in mental health, Dr Yao's methodology depended in large part on the appellant's accounts of her own psychiatric history, which would make his diagnosis vulnerable to inaccuracies, whether deliberate or inadvertent, in her narration. As the Deputy Public Prosecutor ("the DPP") pointed out, and as has been noted above, the appellant conveyed to Dr Yao a version of events which differed from the District Judge's findings and which sought to minimise her culpability. Her seeming failure to be completely candid in this regard was cause for concern that she might not be altogether frank elsewhere in the recitation of her psychiatric history to Dr Yao. There was therefore some basis for the DPP's position that the Medical Report should be treated with some circumspection notwithstanding Dr Yao's judgment that her symptoms "are very unlikely to be feigned". Furthermore, it could be argued that the appellant's failure to report her alleged symptoms in the course of the trial cast additional doubt on their veracity. Despite this, I was of the opinion that the Medical Report was not so hopelessly incredible that it should be disregarded without more. Moreover, Dr Yao had also counterchecked the appellant's accounts in relation to her conduct with her husband. Hence, I thought that the Medical Report just about fulfilled the third *Ladd v Marshall* condition of reliability or credibility.

20 At stake here is a person's liberty. For that reason, where there is some evidence that is not incredible and would be an important influence on the appellate court's decision on whether leniency is called for towards the appellant, the court should be slow to reject that evidence outright, even if the evidence could, with reasonable diligence, have been discovered for use at trial. I thought that

this was true of the Medical Report in the present case. As a consequence I considered that the Medical Report was "necessary" and allowed its admission into evidence.

21 Having admitted the Medical Report, the next step was to ascertain its reliability as evidence that the appellant was suffering from major depressive disorder and obsessive compulsive disorder at the time of the offences. Accordingly, I directed that Dr Yao be called to the witness stand to address any queries that counsel or I might have.

The appellant's mental health at the time of her offences

22 The examination of Dr Yao on the witness stand proceeded largely along the lines already suggested in the prosecution's list of questions pertaining to the Medical Report, and his testimony in court generally mirrored, and in some instances expanded upon, the answers previously given to those questions. Dr Yao readily acknowledged that his diagnosis of the appellant's mental state at the time of her offences was premised mainly on her and her husband's accounts of her conduct at that time. He had in his answers to the prosecution's questions pointed to his "objective mental state examination" of the appellant as another reason not to doubt his diagnosis in the Medical Report; by this Dr Yao meant his own observations of the appellant during his interviews with her, such as that her "mood was consistently depressed" and that she showed "marked psychomotor retardation". However, like the prosecution, I was not certain that this was probative of her mental health as at the time of the offences, even if it was probative of her mental health four years on at the time of the interviews.

23 Dr Yao therefore had no difficulties with the prosecution's view that the reliability of his diagnosis of the appellant's psychiatric condition at the time of the offences depended very much on her and her husband having been honest and accurate in what they told him during his interviews with them. However, even as he was confronted repeatedly with the discrepancy between the findings of the District Judge and the appellant's account of her offences as related to him in those interviews, he steadfastly maintained that this discrepancy made no difference to his diagnosis. In effect, Dr Yao drew a distinction between untruthfulness in her account of the offences on the one hand, and untruthfulness in her account of her psychiatric symptoms at the time of her offences on the other. Untruthfulness in the former regard did not necessarily mean untruthfulness in the latter, and it was the latter that mattered in assessing her mental health at the time of the offences.

24 Dr Yao went on to explain that he had taken precautions to minimise the risk of the appellant's untruthfulness in her account of her psychiatric symptoms at the time of the offences. First, he ensured that malingering was not an easy option for her by asking open-ended questions about her symptoms, meaning questions which did not simply require a "yes" or "no"; if necessity dictated that he ask her close-ended questions, he would follow up by asking her to describe her symptoms herself. Patients who malinger, Dr Yao said, are usually suggestible; if they are presented with a catalogue of symptoms and asked whether or not they have experienced each of them, they usually reply in the affirmative to almost every one. Second, Dr Yao conducted multiple interviews with her and was satisfied that her accounts on the various occasions were consistent with one another; patients who malinger, by contrast, find it difficult to keep their feigned symptoms consistent. Third, Dr Yao obtained corroborative history from the appellant's husband, specifically his account of frequent quarrels with her and instances of her becoming angry with him to the point of scratching him; Dr Yao said that he would have liked to hear from other sources but the appellant told him that she had not been in contact with her family members since the birth of her son. Fourth, Dr Yao looked at the totality of the appellant's account and determined that it was typical of patients with depressive disorder.

25 My attention was called to the appellant's childhood history by both Dr Yao and counsel for the appellant, Mr Quek Mong Hua ("Mr Quek)". They said that the appellant had herself been the victim of abuse when she was about 11 years old. Mr Quek informed me that this had in fact been the subject of a newspaper report, a copy of which was later, at my request, forwarded to me. Dr Yao testified that the appellant had told him that her mother would beat her almost every day. In addition, she had to do things strictly in accordance with what her mother wanted; if she did those things too fast or otherwise not in rigid compliance with her mother's demands, her mother would beat her. Dr Yao said that this could contribute to the appellant having obsessive compulsive disorder in the future, and more generally he said that persons who had a difficult childhood were at a higher risk of developing mental illnesses than persons who had not. The veracity of the appellant's account of her childhood was not challenged before me and I accept it as true; likewise I accept Dr Yao's testimony as to the potential effects of such a childhood on the appellant's future mental health.

26 Prior to hearing Dr Yao's evidence on the stand, I found it difficult to believe that he could have, on the basis of interviews conducted in May 2013, gained any reliable insight into the appellant's mental health at the time of the offences four years earlier. This scepticism was exacerbated by the way in which the appellant's account of her offences deviated substantially from the District Judge's findings of fact. But having heard him testify, I am satisfied that his diagnosis in the Medical Report is reliable. In his professional work, Dr Yao has had the advantage of interacting with numerous persons who have or claim to have the sort of psychiatric conditions that he diagnosed the appellant as suffering from. I believe these experiences would have enabled him to discern patterns of behaviour and other trends which would lend weight to his assertion that the totality of the appellant's account was typical of patients with depressive disorder. Moreover, I am persuaded that he was conscious of and did put in place adequate safeguards against the possibility of the appellant's malingering. Dr Yao's reasoning process and methodology appear to me to be sound. In the absence of any other expert opinion to contradict his, I accept his diagnosis that the appellant was at the time of the offences suffering from both major depressive disorder and obsessive compulsive disorder.

27 As for the severity of the appellant's psychiatric conditions, the DPP suggested to Dr Yao that her disorders might have been fairly mild at the time she committed the offences and that if they were more pronounced when he interviewed her in May 2013, this was attributable to her having undergone a criminal trial and having been convicted at its conclusion. Dr Yao agreed that the stress of trial and conviction could have exacerbated her disorders, but on the basis of her symptoms at the time of the offences as reported to him – including being unable to care for her son, frequently getting angry at her husband sometimes to the point of scratching him, and taking an hour or two just to wash two milk bottles – he appeared to be absolutely certain that those disorders would already have been fairly severe at the time the offences were committed.

Whether the sentence below should be disturbed

28 Given these findings as to the appellant's mental health at the time of the offences, the question that arises is whether her psychiatric conditions lessen her culpability for the offences and so justify a reduced sentence. As to the effect her disorders would have on her behaviour, Dr Yao testified that there was "no direct relation" between them and the commission of acts of violence. He said this in response to my asking him whether the appellant's conditions "necessarily" caused someone to be violent, and so when he spoke of there being "no direct relation" I understood him to mean that having major depressive disorder and/or obsessive compulsive disorder did not necessarily make a person violent. There must be a trigger. Dr Yao added, however, that there was evidence that persons with major depressive disorder could have "emotional dysregulation", which means that they can, for instance, "get angry over very small matters and overreact". Such "small matters" might

include her domestic maid failing to adhere to the strict pattern of behaviour which she by reason of her obsessive compulsive disorder demanded that her maid comply with. In his answers to the DPP's questions, Dr Yao also said that her conditions were "quite severe" and "can cause her to have difficulty controlling her emotions and behaviour". In his view, her disorders were a "contributory" cause of her offences. The prosecution did not seriously challenge these views.

29 There is one aspect of the present case which I thought I ought to mention. The appellant had employed four domestic maids in the six months prior to hiring the victim, and the first of those four would have been employed about five months after the birth of the appellant's son, the event which Dr Yao called the "precipitating factor" for the appellant's psychiatric conditions. Yet, there was no report of abuse in respect of those four previous maids. When I posed this query to Dr Yao, he informed me that the appellant's husband had told him that as the victim was their fifth maid in a fairly short span of time, they would be precluded by the Ministry of Manpower regulations from hiring a new one should they wish to terminate the victim's employment. In short, the appellant and her husband would have to continue with the victim or do without a maid altogether. This, Dr Yao said, could have been an additional source of stress for the appellant, and it might explain why she abused the victim but not the earlier maids. This explanation seems plausible, and could be a reason why I should not take the lack of abuse of the first four maids by the appellant as evidence that she was not suffering from psychiatric problems at the time of the offences or that there was no causal connection between those problems and the offences.

30 Viewing the evidence of Dr Yao in its totality, and being satisfied that the appellant's disorders were a contributory cause of her offences, I am of the view that her culpability is not so great as to merit the total sentence of 16 months' imprisonment imposed by the District Judge. I am confident that had Dr Yao's evidence been placed before the District Judge, he would have had second thoughts on the sentence which he had imposed on the appellant. What is left for me to decide is the extent to which the sentence should be disturbed.

31 Mr Quek urged me not to impose a custodial sentence. In light of the appellant's psychiatric disorders, he urged me to hold that her rehabilitation, rather than general deterrence, should be the foremost sentencing consideration. Incarceration would not do anything to improve her condition, and furthermore if she was not imprisoned she would be able to seek outpatient treatment at a mental health facility. Hence Mr Quek asked that her punishment be limited to a fine. In response, the DPP pleaded with me to bear in mind the station of domestic maids in Singapore – among other things, having to rely on their employers for their basic needs, not having a place of asylum to return to at the end of a workday, often tolerating difficult working conditions on account of financial hardship back home. The prosecution submitted that the vulnerability of domestic maids as a class meant that general deterrence should always be a significant consideration in maid abuse cases, and this should be so in the present case notwithstanding the appellant's mental health problems. The prosecution also argued that in fact, the appellant's rehabilitation would be best served by a custodial sentence because the court would have no power to order psychiatric treatment should she not be imprisoned, whereas the court could order such treatment as a term of her imprisonment.

Sentencing precedents

32 Mr Quek cited in his submissions a precedent in which no more than a fine was imposed on an offender who abused her maid while suffering from a psychiatric condition. This was *Public Prosecutor v Cheah Yow Ling* [2009] SGDC 385 ("*Cheah Yow Ling*"). In that case, the accused, who had abused her domestic maid by slapping her once on the left cheek and knocking her head twice using her knuckles, pleaded guilty to one charge of causing hurt *simpliciter* under s 323 of the Penal Code. Two other charges of slapping her maid were taken into consideration. The accused was diagnosed as

having had major depressive disorder of moderate severity and a recurrent nature at the time she committed the offences. A fine of $6,000 was imposed, the maximum fine to which she was liable being $7,500.

33 *Cheah Yow Ling* cited at [19] three other precedents in which the maximum fines were imposed on offenders who had abused their maids while labouring under the effects of psychiatric conditions. These three are all unreported cases but fortunately descriptions of them can be found in *Public Prosecutor v Foo Chee Ring* [2008] SGDC 298 ("*Foo Chee Ring*"). The first of the three is *Public Prosecutor v Koh Soon Kee* (District Arrest Cases Nos 41231 and 41325-7 of 2006) ("*Koh Soon Kee*"), referred to at [245]–[246] of *Foo Chee Ring*. In that case, the offender suffered from depressive disorder and pleaded guilty to two charges of voluntarily causing hurt *simpliciter* under s 323 of the Penal Code. One charge was for "fisting" the back of her domestic maid's head and the other was for using a knife to hit her domestic maid's wrist once, causing a superficial abrasion. Two other charges were taken into consideration, one for slapping her domestic maid once on the cheek and the other for using criminal force in pulling her domestic maid's shirt. Under the then version of the Penal Code the maximum fine that could be imposed for a s 323 offence committed against a domestic maid was $1,500. That was the fine that was imposed for each of the two charges.

34 The second unreported precedent is *Public Prosecutor v Pooja Tanwani* (Private Summons No 1042 of 2006), referred to at [247] of *Foo Chee Ring*. The offender there suffered from claustrophobia and pleaded guilty to one charge of voluntarily causing hurt *simpliciter* under s 323 of the Penal Code for grabbing and pulling her domestic maid's hair. A medical report on the maid showed that she had bruises on her left cheek, left ear and chest; it was alleged that these injuries had also been caused by the offender but those allegations were found to be suspect. A fine of $1,500, the maximum possible at the time, was imposed. The third unreported precedent is *Public Prosecutor v Chung Yee Houng* (Magistrate's Arrest Case No 1412-8 of 2007), referred to at [248]–[249] of *Foo Chee Ring*. The offender there suffered from post-natal and chronic reactive depression and she pleaded guilty to two s 323 charges. One was for slapping her domestic maid once on the face and the other was for pulling her left ear. Taken into consideration were four similar charges and a charge for wrongful confinement under s 342 of the Penal Code. The offender, who had voluntarily paid her domestic maid compensation of $1,700, was fined $1,500 for each of the two s 323 charges. This was the maximum fine at the time.

3 5 *Foo Chee Ring* at [242]–[244] referred to one more relevant unreported precedent. This was *Public Prosecutor v Kiew Soek Inn* (District Arrest Case No 16446-7 of 2007) ("*Kiew Soek Inn*"). The offender there had major depressive disorder and she pleaded guilty to a charge under s 323 of the Penal Code for punching the chest and pulling the hair of her daughter's domestic maid. Taken into consideration was another charge under s 324 for applying a hot iron to the back of the maid's hand when the maid left a hot iron unattended. This was of concern to the offender because her granddaughter had previously been hurt by a hot iron similarly left unattended; the offender and the maid got into an argument as to whether the iron was still hot and in the midst of it the offender placed the iron on the maid's hand. The offender voluntarily paid $5,000 to the victim as compensation. The court then imposed the maximum fine of $1,000 on the offender for the s 323 offence.

36 I have gone into these five precedents in some detail and it is clear that the present case involves abuses of appreciably greater seriousness. Leaving aside the s 324 charge in the present case, the appellant hit the victim with a bamboo pole multiple times, including on the head, and inflicted multiple scratch marks on the victim with a needle. In contrast, the precedents above largely involved no more than one or two punches or slaps; the most egregious act was that of the offender in *Kiew Soek Inn* of applying a hot iron to her maid's hand, but the charge in respect of that act was

merely taken into consideration and it cannot be assumed that if the charge had been proceeded on the punishment would not have gone beyond a fine. The most egregious act in those precedents that did give rise to a charge proceeded on was probably that of the offender in *Koh Soon Kee* of using a knife to hit her maid's wrist once, but even that does not compare to the degree of abuse in the present case. I will return to these precedents later when considering the question of sentence.

Appellant's challenge to the District Judge's findings of fact

37 Mr Quek also argued before me that the District Judge's findings of fact should not be accepted unquestioningly. His point was this. The District Judge was presented with only two conflicting versions of events. The victim alleged repeated abuse while the appellant wholly denied that any abuse had happened. It was only when the appellant had her interviews with Dr Yao that a third possible version emerged. In this version, the appellant admitted to having subjected the victim to abuse but of a degree much less serious than that alleged by the victim. Having heard the evidence, including the medical evidence on the victim's injuries, the District Judge did not believe the appellant's complete denial of abuse. Since he had before him only two starkly conflicting versions of events, it was natural for him to accept the victim's version entirely, having rejected the appellant's version. However, it might well be that the third version, as related by the appellant to Dr Yao, is closer to the truth than the victim's; and if the District Judge had had this third version before him, he might well have moderated his findings somewhat. This possibility, Mr Quek contended, should lead me to treat the District Judge's findings with some circumspection, and indeed I should find that the truth lies somewhere in between the victim's version and the third version.

38 I accept, as a matter of psychology, that the District Judge might have arrived at different findings of fact if the appellant's case before him had been an admission of less abuse rather than a bare denial of any abuse. But I am unable to go any further than this. The point which Mr Quek sought to make is too speculative and is not backed by any objective evidence. I am conscious of the fact that, unlike me, the District Judge had the advantage of observing the victim on the witness stand; if he assessed her testimony to be worthy of belief I cannot see how I am well-placed to interfere with that. The effect of acceding to Mr Quek's argument would be to depart from the District Judge's findings solely on the basis of the position that the appellant now takes at this appeal. This would be undesirable. If the trial judge's findings are to be set aside or modified on appeal, this would have to be grounded on evidence and not hypothesis. Accordingly I do not think it would be right for me to disturb the findings of fact of the District Judge. It has to be on the basis of those findings that the appropriate sentence is to be fashioned in the present case.

39 Having said that, however, I think that there is one aspect of the District Judge's decision that needs revisiting in the light of the appellant's psychiatric disorders at the time of the offences. That aspect is his characterisation of her conduct in scathing and condemnatory terms. For example, at [29] of the GD, the District Judge said that "[t]here was a definite, deliberate and sustained pattern of abuse by the accused"; at [31] he said that her actions "were both cruel and dehumanising, besides defying human logic" and "a cruel form of mental abuse"; at [34] and [42] he described her actions as "perverse, exploitative and an outrageous affront to human dignity and the conscience of any modern society in the world today"; at [36] and [43] he considered that she had "systematically inflicted a deliberate and despicable pattern of physical abuse upon the victim"; and at [37] he opined that the evidence established a "distinct pattern of intentional physical abuse" and showed that her treatment of the victim was "one of callousness and a reckless disregard for the well being of a vulnerable person".

40 What emerges clearly is that the District Judge thought that the appellant had been callous and cruel, and that she had inflicted abuse in a deliberate manner to the point of being systematic. I

would hasten to add that he cannot be faulted for those comments; the abuse was indeed repeated and prolonged and if an average person had perpetrated it I would have little hesitation in labelling that conduct in the same way. But being now cognisant of the appellant's mental health problems at that time, I think that some of these censorious epithets may not be warranted. Callousness and cruelty connote a conscious disregard for another person; one knows that another is suffering but is indifferent to or even delights in that knowledge. In the present case, in the light of the evidence of Dr Yao, I think it more likely than not that the appellant's acts of abuse were not accompanied by such a conscious disregard for the victim's pain. I am not sure it would be right to label the appellant's abuse of the victim as being deliberate and systematic; certainly, the abuse was intentional in the sense that it was not accidental, but I do not think it was deliberate in the sense of being calculated to induce suffering. Rather, it seems to me that when she committed the offences her mind was probably so saturated with stress and frustration born of her psychiatric disorders that she would have had little cognitive space left for an appreciation of the fact that she was causing hurt to a fellow human being.

41 There is no doubt that the victim suffered to no small degree, physically and emotionally, over a substantial period of time. I have no wish to make light of the pain the victim had to put up with. But it is another thing altogether to say that the person who inflicted such suffering was callous or cruel or malicious. Given the appellant's psychiatric condition at the time of the offences I am not prepared, in the present circumstances, to make those judgments of her conduct and character.

Principles of sentencing

42 It is not in controversy that there is a need for rehabilitation in the present case. Contrary to the prosecution's submission, I think that this points in the direction of a non-custodial sentence. But I also acknowledge that the need for rehabilitation must be balanced against the countervailing need for deterrence and retribution.

43 Deterrence has two aspects. One is called specific deterrence and it involves deterring the appellant as an individual from committing similar offences in the future. The other is called general deterrence and it is that of deterring like-minded persons generally from committing such offences. As to the former, I am satisfied that merely having undergone the process of criminal prosecution and conviction would sufficiently deter the appellant from ever abusing her domestic maid again. In the circumstances of this case, specific deterrence does not call for imprisonment for any length of time. As to the latter, if general deterrence is addressed to persons who, like the appellant, have psychiatric conditions that make it difficult for them to control their emotions and behaviour, I think that object would be little served by a custodial sentence. General deterrence assumes persons of ordinary emotions, motivations and impulses who are able to appreciate the nature and consequences of their actions and who behave with ordinary rationality, for whom the threat of punishment would be a disincentive to engage in criminal conduct. But persons labouring under such mental disorders as the appellant do not possess ordinary emotions, motivations and impulses. For such persons, at the time of their criminal acts, they would be so consumed by extraordinary emotions or impulses that the threat of punishment features hardly, if at all, in their cognition and hence has little if any effectiveness as a disincentive.

44 It goes without saying that there is ordinarily a pressing need for general deterrence in cases of maid abuse. Domestic maids are a class of highly vulnerable victims; their employers can subject them to strict control, which means that abuse can go unreported and undetected for long periods of time. Furthermore some employers reduce them to their function of providing domestic help instead of seeing them as human beings with aspirations, interests, intellect and more. These employers might treat their maids as second-class persons who ought to endure uncomplainingly conditions at which

they themselves would be aghast. When such employers perceive that their maids have underperformed, harsh reprimands and even invective may be considered par for the course; this could graduate by degrees to physical assault, yet neighbours may be reluctant to interfere, thinking "they are merely teaching the maid a lesson" and "it is not for me to stick my nose in their business". Given the relative ease of keeping instances of maid abuse under wrap from the authorities, it is imperative that there be significant disincentive for employers to abuse their maids, and that means imposing appropriately severe penalties for these offences. Indeed Parliament in its wisdom took the initiative over a decade ago by enacting s 73 of the Penal Code, the provision enhancing punishment for offences committed against maids.

45 There exists already an ample body of precedents in which employers of ordinary constitution and cognition, as opposed to those with psychiatric disorders, were imprisoned for months or years for abusing their maids. Those precedents will deter the ordinary person, and their deterrent value is not reduced by a gentler sentence in the present case because the ordinary person will understand that this case is extraordinary and does not represent a general softening of stance against persons who abuse their maids. Therefore, in my judgment, neither the need for specific deterrence nor the need for general deterrence necessarily calls for a custodial sentence in the present case.

46 Then there is retribution. The essence of it, as articulated by Yong Pung How CJ in *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [16], is that "the offender must pay for what he has done". Elaborating, Yong CJ said that the idea of retribution is that "punishment restores the just order of society which has been disrupted by [the offender's] crime", and hence punishment on retributive principles "must reflect and befit the seriousness of the crime". Yong CJ prefaced these comments by quoting Lawton LJ in *R v Sargeant* (1974) 60 Cr App R 74 at 77 and in *R v Davies* (1978) 67 Cr App R 207 at 210; those quoted passages explain that the courts are the medium through which society "show[s] its abhorrence of particular types of crime", and such abhorrence is demonstrated in the severity of the sentences imposed. In that regard, Lawton LJ opined that the court's role is to lead public opinion, instead of being led by it or disregarding it altogether. I think that this is a prudent approach. Public opinion is at the best of times an accumulation of human wisdom but at its worst it is rife with baseless prejudice and superstition. The former is to be embraced and the latter jettisoned, and it falls to the court to point the way forward with reason as its guide.

47 All this is easy to state but not easy to apply. Retribution is a difficult concept to deconstruct; it is formulated in broad terms that sound intuitively incontrovertible but which shed little light on what retribution requires in a specific situation. It is said that retribution is designed to restore the just order of society, but that does not assist the court a great deal in determining how much or how little punishment will suffice to achieve such restoration. It is said that retribution should express the rightful abhorrence of society towards the criminal conduct, but that does not tell the court what extent of abhorrence is appropriate in the particular case. By its very nature the retribution enquiry is inexact.

48 I would venture the following comments. Two broad factors are key in determining the correct degree of retributive punishment. One relates to the victim and the other, the offender. As regards the victim, one considers, perhaps among other things, his station in life and the extent of harm inflicted on him. The more vulnerable and disadvantaged the victim is, the greater the sense of abhorrence society feels when harm is visited on him; and the greater the harm, the more pronounced the abhorrence and the greater the punishment needed to restore the just order of society. As regards the offender, one likewise considers his station in life, as well as his mental state when he inflicted harm on the victim. The more privileged the offender is, the greater the sense of abhorrence that he should have harmed another; and as for his mental state, at one end of the scale is

accidental behaviour, which generally excites no abhorrence and demands no punishment, while at the other end is a positive desire to cause severe harm which would represent the zenith of malice or cruelty. In this latter situation the abhorrence rises to the level of outrage. Now the broad rubrics of victim and offender might admit of more sub-factors, and there may yet be other matters to be taken into account. But even limiting the enquiry to those two broad factors, the exercise of balancing the interests is not one which is amenable to mathematical precision.

49 I return to the present case. The appellant is not a particularly privileged individual. As a child, she was the victim of physical abuse. She was suffering from the two psychiatric conditions. From the medical evidence, she did not harm the victim out of cruelty or callousness. She was simply overwhelmed by the emotions generated by the disorders over which she had no control, and she was probably barely conscious of the fact that she was harming a human being. The degree of abhorrence that arises from this is therefore not high. On the other hand, there is the victim. The prosecution's descriptions of her station in life were evocative – here is a person who, like many domestic maids, has no place of refuge to return to at the end of a working day, who has precious little time to herself, and who, by reason of financial hardship, may have had to grit her teeth and bear in silence difficult working conditions. The physical harm inflicted on the victim was not insignificant, and added to this was the emotional distress of constantly living in fear of further abuse. The abhorrence that this arouses is substantial. Looking at the matter in the round, therefore, I would say that the principle of retribution calls for a custodial sentence, albeit not a particularly lengthy one.

Conclusion on sentence

50 Drawing the threads of analysis together, as a matter of principle, rehabilitation calls for a non-custodial sentence but retribution calls for a custodial one, with deterrence being a neutral consideration. I recognise that the present case involves appreciably more serious abuse than those precedents in which a fine was imposed. Moreover, given that in almost all of the precedents cited the maximum fine for the offence was imposed; it might then be argued that any more severe abuse than in those precedents merits imprisonment.

51 In my judgment, however, such an argument from authority is misconceived. Although the precedents show that the maximum fine was imposed for abuse of a comparatively milder nature, it does not follow that this degree of severity represents the ceiling beyond which imprisonment must be imposed. It could well be that a maximum fine is appropriate for a fairly wide range of severity of abuse into which the present case falls. Further, I consider it material that the appellant in the present case suffered not only from major depressive disorder but also from obsessive compulsive disorder; and, as Dr Yao testified, of the three grades of major depressive disorder – mild, moderate and severe – the appellant's came within the highest end of the scale. By contrast, in two of the precedents the offender suffered from major depressive disorder alone; in one of them the offender was said to have suffered from depressive disorder; and in another one the offender suffered from post-natal depression which, according to Dr Yao, is a less severe type of depression than major depressive disorder. I do not mean to suggest a quantitative approach in which having two disorders is necessarily more disruptive than having one, but where a person suffers from more than one disorder and another suffers from just one of them, I would consider the former individual's mental health to be in a worse state. Hence, in my view, the appellant's psychiatric problems were more serious than those of the offenders in the precedents and this is relevant in the following way. The more serious an individual's psychiatric problems, the greater the strain and stress she is put under by events in her life. This has two effects. One is that her emotions reach breaking point more easily, resulting in her lashing out more readily. The other is that, when she lashes out, the degree of harm she is likely to cause is greater. In that sense the degree of harm that she causes is beyond her control. Therefore, the more serious an individual's psychiatric problems, the greater is the excusatory

force of those problems. Given two individuals, A and B, where A inflicted more severe abuse than B but is in a worse state of mental health than B, the punishment that ought to be visited on A may not necessarily be higher than that for B.

52 Accordingly, while the degree of harm in the present case demands greater retributive punishment than those imposed in the precedents, the extent of the appellant's psychiatric condition calls for less. In a sense, this is a case in which both the victim and the offender merit sympathy, though not to the same extent. As for the victim, there can be no two ways about it. Even if she did not go about her work in the manner in which the appellant would like her to, thus causing the appellant to lose her cool, that cannot justify the infliction of any physical abuse by the appellant whatsoever. However, for the appellant, her mental afflictions were real and fairly severe. They affected her acts and emotions even with regard to her own husband. The extent to which she abused the victim, though relevant, was on that account in some way fortuitous, in that it depended on the seriousness of her psychiatric problems which was not within her control. In the circumstances here, there is a need for me to temper justice with some measure of compassion. On balance, I am of the opinion that the present case calls for a departure from the norm and that a non-custodial sentence is appropriate.

53 What remains to be decided is the quantum of fines to be imposed. For the s 323 charges the maximum amount is $7,500 while there is no upper limit for the s 324 charge. I am conscious that in most of the precedents that I have discussed the maximum fines were imposed for the s 323 charges. But in those precedents the maximum fines were significantly lower than $7,500. In the one precedent in which the maximum fine imposable was $7,500, *Cheah Yow Ling*, the court thought that a $6,000 fine sufficed. In the present case, the appellant has been convicted of three charges. The fines imposed for all three charges will be cumulative. It is important that the total fine imposed for all three charges should not be crushing to the appellant and her family; as the appellant is a full-time homemaker the financial burden will invariably fall upon her working husband, who is earning $4,200 a month as an IT technician. He has also to support his parents. Where multiple terms of imprisonment are ordered, the court has the option of mitigating the harshness of the total sentence by ordering that some of the terms run concurrently, but there is no similar mechanism where fines are concerned. Therefore I am of the view that, in order not to impose a sentence that will be crushing for the appellant and her single-earner family, the maximum fines should not be imposed for the s 323 charges. Moreover, as discussed below, I think a compensation order should be made in favour of the victim. All considered, I am of the view that a fine of $4,000 for each of the two s 323 charges should, in the circumstances here, serve the ends of justice; in default there shall be three weeks' imprisonment on each charge. As for the s 324 charge, I think that a fine of $7,000 should similarly suffice, with a default imprisonment term of four weeks. The total fine is thus $15,000, with ten weeks' imprisonment in default.

Compensation orders

54 There is one more issue that I wish to address, which is that of compensation orders. This issue arises because it would appear from [17] of the District Judge's GD that the appellant has not paid compensation to the victim. It is not clear why the District Judge did not follow up and consider whether a compensation order should be made in the present case.

55 Compensation orders are not a recent development. They existed in the previous version of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985") which was in force up to 2 January 2011. Under that incarnation of the Code it was entirely at the trial court's discretion whether a compensation order should be made. The relevant provision was s 401(1)(*b*) and it read:

Order for payment of costs of prosecution and compensation

401.—(1) The court before which a person is convicted of any crime or offence may, in its discretion, make either or both of the following orders against him:

…

(*b*) an order for the payment by him of a sum to be fixed by the court by way of compensation to any person or to the representatives of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed.

Under the CPC 2012, however, the trial court has a positive obligation to consider whether or not to make a compensation order; and if it is of the view that such an order would be appropriate it has a further obligation to make the order. That much is clear from the wording of s 359:

Order for payment of compensation

359.—(1) The court before which a person is convicted of any offence shall, after the conviction, consider whether or not to make an order for the payment by that person of a sum to be fixed by the court by way of compensation to the person injured, or his representative, in respect of his person, character or property by —

(*a*) the offence or offences for which the sentence is passed; and

(*b*) any offence that has been taken into consideration for the purposes of sentencing only.

(2) If the court is of the view that it is appropriate to make such an order referred to in subsection (1), it must do so.

…

56 There has been fairly extensive discussion of compensation orders in a number of authorities. A consistent reminder from these authorities is that compensation orders are meant solely to provide redress to the victim and are not intended to punish the offender, which means that they do not form part of the sentence imposed: see the decision of the Court of Criminal Appeal in *Public Prosecutor v Lee Meow Sim Jenny* [1993] 3 SLR(R) 369 ("*Lee Meow Sim Jenny*") at [28] and the decision of the Court of Appeal in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [157]. Compensation orders are in effect a shortcut to the remedy that the victim could obtain in a civil suit against the offender. They are particularly suitable for victims for whom commencing a civil suit would be impractical, and the paradigm example of such victims are impecunious ones, as pointed out by Yong Pung How CJ in *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220 ("*Donohue Enilia*") at [19] and Chan Sek Keong CJ in *Public Prosecutor v AOB* [2011] 2 SLR 793 ("*AOB*") at [23]–[24]. It is not controversial that domestic maids are often, if not invariably, impecunious: see *ADF* at [158]; and for that reason I would think that where a maid has been a victim of abuse that would *prima facie* be a suitable case in which to make a compensation order.

57 But of course there are countervailing considerations, as Yong CJ indicated in *Donohue Enilia* at [20]–[26]. Since a compensation order is not punishment, it should not be oppressive to the offender; it should be realistic so that the offender is able to pay the compensation within a reasonable time. Illustrating this point is *R v Daly* [1974] 1 WLR 133, referred to in *Donohue Enilia* at [24]. In that case the English Court of Appeal set aside a compensation order because it would have saddled the

offender with the burden of paying instalments over six years, a period which the court thought was unreasonably long.

58 Another constraint on the making of compensation orders is that they should not require the court to embark on complicated investigations of fact or law. In *Donohue Enilia* at [24], Yong CJ cited a few English Court of Appeal cases which I think are useful examples of what would be considered too complex. In *R v Donovan* (1981) 3 Cr App R (S) 192, the offender kept a motor car for a longer period than permitted under a contract of hire. There was no damage to the car but the offender was ordered, *inter alia*, to pay compensation to the owner for loss of use. On appeal, the English Court of Appeal held that a compensation order would not be appropriate for the case, since the quantum of damages for loss of use was notoriously open to argument. In *R v Briscoe* (1994) 15 Cr App R (S) 699, the offender failed to comply with a notice to demolish unauthorised extensions to his house. The offender was ordered at first instance to pay compensation to six of the occupiers of adjacent properties. The appellate court, however, held that compensation orders were not appropriate because this would have required a detailed enquiry into the situation of each neighbour as well as expert evidence on the quantification of their loss of visual amenity and loss of privacy (if any). In *Hyde v Emery* (1984) 6 Cr App R (S) 206, the offender obtained employment benefits through false representations. The trial court ordered that the offender pay compensation to the government for the overpayment of benefits to him; however he later argued that there should be a set off against this sum of compensation the amount of supplementary benefits to which he would have been entitled had he claimed it. The English Court of Appeal held that a compensation order was not appropriate because the question of whether the set-off should be allowed was not capable of easy resolution.

59 In contrast to these three English cases just described, I think that in cases of maid abuse, ascertainment of compensation will in the normal case be rather straightforward. The injuries suffered by the victim would already have been detailed in the medical report that would ordinarily be produced, and all that remains would be to award a quantum of compensation for each injury. That is something the court can do with the aid of precedents. If what is claimed is compensation for loss of earnings due to the victim's injuries, the enquiry is also not difficult because the salaries of domestic maids do not vary very much from individual to individual.

60 Therefore I would go so far as to say that, in prosecutions for domestic maid abuse offences, compensation orders should generally be a matter of course. It follows that if trial judges decline to make such orders in particular cases, they would ordinarily be expected to provide reasons. In the first place the CPC 2012 places them under a duty to consider whether or not to make a compensation order. The trouble is that, understandably, trial judges often have enough to deal with in relation to the charge(s) without having to think about compensation orders. As such they can be forgiven if the making of a compensation order is not foremost in their mind. Also, the person with the greatest interest in a compensation order and who is most likely to call it to the attention of the trial judge is the victim, who may not necessarily be present or represented in court. Thus the prosecution and defence counsel should remind the trial judge of his obligation to consider whether or not to order compensation to the victim.

61 There might remain cases in which the trial court failed to consider whether or not to make a compensation order. If such cases go up on appeal, the question that arises is what the appellate court can do about it. In my judgment, the appellate court may direct that the case be sent back to the trial court for a consideration of whether such a compensation order should be made, or it may make the order itself if it thinks that this would be appropriate; it should not matter whether the appeal is an appeal against conviction or sentence or both.

62 This may not always have been the law; under the CPC 1985, the appellate court might not

have had the power to make a compensation order where the trial court did not consider whether or not to do so. Indeed, the Court of Appeal in *Lee Meow Sim Jenny* at [28] held that the appellate court, in an appeal against sentence, had no such power; this decision was followed by Chan CJ in *AOB* at [20]. These two decisions hinged on s 256 of the CPC 1985, which set out what the appellate court could do at the hearing of an appeal, according to the nature of the appeal, *ie*, whether the appeal was against acquittal, conviction, sentence or from any other order. It read as follows:

> **Decision on appeal.**
>
> **256.** At the hearing of the appeal the court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may —
>
> (*a*) in an appeal from an order of acquittal, reverse the order and direct that further inquiry shall be made or that the accused shall be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;
>
> (*b*) in an appeal from a conviction —
>
> (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial;
>
> (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence; or
>
> (iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence;
>
> (*c*) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence; or
>
> (*d*) in an appeal from any other order, alter or reverse the order.

The Court of Appeal in *Lee Meow Sim Jenny* implicitly proceeded on the premise that s 256 of the CPC 1985 was exhaustive of the appellate court's powers. In other words, its starting point was that the appellate court could not do what s 256 did not empower them to do. The court then reasoned that since a compensation order was not part of the "sentence" imposed on an offender, the court had no power to make such an order under s 256: *Lee Meow Sim Jenny* at [28].

63 Under the then law, an appellate court could only make a compensation order where none had been made by the trial court in one circumstance. This circumstance was described by Yong CJ in *Donohue Enilia* at [14]–[15], and it was where the trial court had refused to make such an order despite having considered whether it should do so. If that refusal was specifically appealed against, it would be an appeal against "any other order" under s 256(*d*) and the appellate court would have the power to alter the order, which would include the power to make a compensation order. In contrast, if as in *Lee Meow Sim Jenny* and *AOB* the trial court did not even consider whether it should make a compensation order, there would be no order to appeal against and s 256(*d*) would not apply; and therefore the appellate court would have no power under s 256 to make a compensation order.

64 It is clear that *Lee Meow Sim Jenny* led to an unhappy result. An appellate court would not have the power to make a compensation order, however appropriate it might be to do so, simply because the trial court did not apply its mind as to whether it should make such an order.

Fortunately, the position is different now under the CPC 2012, which governs the present case because it came into force before the appellant was first charged on 3 May 2011. What was s 256 in the CPC 1985 has been modified. The corresponding provision in the CPC 2012 is s 390 and crucially, s 390(2) now leaves it in no doubt that the position stated in *Lee Meow Sim Jenny* is no longer good law. This is s 390 of the CPC 2012:

> **Decision on appeal**
>
> **390.**—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —
>
> (*a*) in an appeal from an order of acquittal —
>
> (i) reverse the order and direct that further inquiry shall be made or that the accused shall be retried, or remit the matter, with the opinion of the appellate court, to the trial court; or
>
> (ii) find him guilty and pass sentence on him according to law;
>
> (*b*) in an appeal from a conviction —
>
> (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction, or remit the matter, with the opinion of the appellate court, to the trial court;
>
> (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or enhance the sentence; or
>
> (iii) with or without reducing or enhancing the sentence, and with or without altering the finding, alter the nature of the sentence;
>
> (*c*) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence; or
>
> (*d*) in an appeal from any other order, alter or reverse the order.
>
> (2) Nothing in subsection (1) shall be taken to prevent the appellate court from making such other order in the matter as it may think just, and by such order exercise any power which the trial court might have exercised.
>
> …

65 In the light of s 390(2) of the CPC 2012 it is clear that this court is empowered to make a compensation order in the same way that the trial court could if this court thinks that such an order would be just. As this is not an issue that has been raised by the parties, a later date will be fixed to allow the appellant and the prosecution to address me on it. As I think it just that the appellant should pay whatever compensation (if any) that may eventually be ordered against her in priority to the fines imposed on her, I direct that payment of the fines herein imposed on the appellant be suspended until the question of the payment of compensation to the victim is disposed of. In the event that such a compensation order is made in favour of the victim, the appellant shall first pay the compensation ordered before paying the fines imposed. The State's interest in the punishment of criminal offenders is equally satisfied whether a fine is paid or a period of imprisonment is served in

default of payment. On the other hand, the victim's interest in compensation is satisfied only where she is actually paid. For this reason and as a general rule, where a compensation order is made in addition to the fines imposed for an offence, the former should take precedence over the latter.

66 To recapitulate, it seems to me that domestic maid abuse is a class of case where it would ordinarily be appropriate to make a compensation order. Quantum is another question. The victim is almost invariably impecunious, and her injuries are likely to be easily ascertained. The trial court must, if it convicts the accused, consider whether or not to grant a compensation order, and if it thinks it appropriate, it must do so. Perhaps it might be argued that too great a readiness to award compensation to domestic maids will encourage them to fabricate abuse. This is at best a cynical suggestion. On a daily basis the trial judge will have to assess conflicting claims. He would be well equipped to deal with any false claims made by a domestic maid. To succeed on such an allegation, the standard of proof is a high one: the trial court needs to be satisfied beyond a reasonable doubt that the domestic maid was indeed abused by the accused employer before it can convict the latter.

Conclusion

67 In the premises, I would allow the appeal and substitute the imprisonment terms with the fine as described in [52] above. Given the fact that the victim has suffered at the appellant's hands I think the question of compensation to the victim ought to be looked into. Should a compensation

order be eventually made, I direct that the compensation should be paid in priority to the fines imposed as discussed in [64] above.